



SEVENTY-SIX YEARS'

Tussle with the Traffic

BEING A

CONDENSATION OF THE LAWS

RELATING TO THE LIQUOR TRAFFIC IN INDIANA FROM 1807
TO 1883 INCLUSIVE, AND ALL THE POINTS DECIDED
BY THE SUPREME COURT ON MORE
THAN FOUR HUNDRED
APPEALS.

TO WHICH IS PREFIXED

A COMPREHENSIVE STATEMENT OF THE INFLUENCES WHICH
HAVE MOULDED PUBLIC OPINION ON THE QUESTION,
AND GIVING A FULL ACCOUNT OF HOW THE
PROHIBITORY LAW OF 1855 WAS OB-
TAINED, HOW IT WORKED,
AND HOW IT WAS
ANNULLED.

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INTRODUCTORY REMARKS.

WHY CALLED A TUSSELE.

THE following gleanings from the legal records of Indiana will be a surprise to many. Very few imagine that the struggle with the liquor traffic in Indiana is seventy-six years old, and that in that time more than a hundred and seventy different laws have been passed to try to keep it within bounds, and that it has contested every step so desperately that more than four hundred cases have been before the Supreme Court of the State. Not all the schools and churches and railroads of the State have occupied half as much time in their regulation. I have chosen to denominate this struggle for the supremacy a "tussle," as conveying in a word some idea of its indecisiveness. It is not ended. It may not be for a century—possibly never—for it is a part of the eternal conflict between right and wrong.

The preamble to the first territorial law recites the mischievousness of places of public tippling, and proposes to lessen them by putting the traffic under bonds. But it has all along refused to be bound. Three-quarters of a century ago it was the same law-evading, law-defying, peace-destroying business that it is now, and must be forever.

The theory of those hardy pioneers was that spirituous liquors were a necessity, but dangerous if left unrestrained; hence they sought to confine their sale to men of "good behavior"—to men who could be trusted—and it was to be limited to taverns. But the traffic would not be restrained. The expense of getting a license was but a trifle, hence at every cross roads a "tavern," with neither beds nor stable, was opened.

It was an evasion of the law. To meet this dodge the law was changed so as to require at least one spare room and two spare beds, and stalls enough for four horses, "for the accommodation of man and beast." But such restrictions soon became entirely too oppressive for the traffic. That was an infringement on personal liberty, hence it demanded that they be taken off, and they were, and "groceries," without pretending to be anything but tippling houses, abounded in every village and along every public road, the haunts of drunken men and disturbers of society.

EARLY DRINKING CUSTOMS.

The legislation of the first thirty years on this subject looks strange to the children of this generation, just as the legislation of this decade will be a wonder to the generation forty years hence. It was all based upon the theory that intoxicants were needful. Whisky was the prevailing drink. Whisky raw and whisky sweetened, whisky hot and whisky cold, and sometimes whisky watered, and often whisky medicated. Roots and herbs, and barks, when steeped in whisky, had wonderful curative properties. Snake-bites and milk sickness, rheumatisms and agues, alike yielded to the thousand and one preparations which the hardy men of those days knew how to make with whisky; and a birth or a death, a wedding or a funeral, a log-rolling or a shucking, or a raising or a quilting, was incomplete and unsatisfactory without it. Egg-nog or toddy, or both, was much more certain at an afternoon visiting party of women than "store tea" was for supper, and well-to-do Methodists and Baptists, and New-Lights, and other good people, were as thoughtful to supply it for their guests, even their preachers, as were other people. The man or woman who did not drink was rare indeed. It is hardly possible to exaggerate when speaking of the prevalence of the use of intoxicants the first third of this century, not in Indiana alone, but everywhere.

This historic fact is introduced here as an apology for the peculiar form of the liquor legislation of that period. The purpose was to restrain, not to prohibit. Our fathers made whisky, and bought and sold and used whisky, because they

regarded it not a luxury merely, but an article of prime necessity, and the legislation of the state, and no less of the church, was in the line of this opinion. All churches tolerated its use, and many a good pioneer had a license from the State to keep a tavern, meaning a license to sell whisky, and at the same time a license from his church to preach; and they were preachers of no mean repute, either, as well as good tavern keepers. The Methodist church made special provision in her discipline for her members, requiring them to keep orderly houses, and in theory not permitting her local preachers to retail at all. But, like her inhibition of slaveholding, this was, in practice, a dead letter, for many of her best local preachers kept tavern, to put it mildly, and many of them liberally patronized their own bars. Many of the early preaching places for all denominations were in the bar-rooms of these taverns. Good men bought and sold and drank, but bad men also engaged in the business and kept dens of dissipation, hence those provisions of the early laws which required all applicants for license to prove that they were of good behavior, and later, of good moral character. Every store that kept tea or coffee kept whisky by the quart, and as there was then no law against giving it away, the barrel, or bottle, was free to all customers. Whisky was cheap then, and merchants were liberal. It is no wonder, therefore, that with such social and business habits men died of delirium tremens in large numbers, called then, brain fever. But no such an apology can be made for the legislation of the last third of a century, for no such social customs obtain, and no such views of the use of liquors any longer exist in good society. Religious men long ago abandoned the business from moral convictions, and tippling houses exist now as places of resort for drinking only, and wholly in the hands of men who are insensible to any moral influences; hence their unmitigated mischievousness and the criminality of the state in allowing them to exist at all.

FIRST TEMPERANCE MOVEMENT.

It was not until about 1830 that men began to associate together for the purpose of checking the tide of dissipation which was sweeping over the country. The individual cases

of total abstinence, or even of moderation, were rare. This temperance work began by a few pledges to abstain from the use of spirituous liquors personally, except in case of sickness. It was soon enlarged to pledges not to supply it at house-raising or other gatherings; then it was not to be furnished at harvests or to guests.

The slow progress of that decade can now hardly be appreciated. Churches began, in their official capacity, to speak out on the subject, and the preserved records of the conferences and other church bodies of that period show resolutions adopted in favor of abstinence that would sound strange to-day, as indicating the prevalence of drinking in the church, and the effort to induce even good men to quit.

Towards the close of the decade the "total abstinence society," whose members were not to use spirituous liquor unless prescribed by a physician, and not to furnish it to others, began to give way, here and there, to societies of "teetotalers," who were pledged to abstain from all that could intoxicate. This had special reference to wine and beer and hard cider. The old organizations were seldom, if ever, changed into the new. Many good men resisted the wine clause as an infringement upon Bible doctrine and teaching. As late as 1841 the *Christian Advocate and Journal*, the oldest and most influential organ of the M. E. Church, opposed "teetotalism," editorially, as contradicting the acts of the Savior and the advice of Paul. But thoughtful men reasoned that drunkenness produced by these beverages was as harmful as if produced by whisky, and that they were in fact an educator for the more intoxicating liquors, hence the doctrine of "teetotalism" grew by organizing new societies, leaving the old to do what they could in their field, until in a few years they were entirely abandoned.

THE WASHINGTONIANS.

This movement was to receive a new impulse in 1841* by the organization known as the Washingtonians. It had been formed in Baltimore during the preceding winter by a few drunkards, who, at a debauch one night, signed a pledge of teetotalism, and went out to plead from the standpoint of reformed men with drunkards to totally abstain. In less than a

year hundreds of thousands had joined them. The pleadings of these men for teetotalism, on the ground that nothing else could save them, soon silenced all arguments from the Bible in favor of wine.

A study of the legislation for the first thirty years will interest the reader and show why I call this contest a tussle—now one on top, now the other. At first, a man, to be qualified to sell liquor, had to be of “good behavior.” But so many behaved badly that, eleven years later, in 1818, he had to prove that he was a man of “good moral character” by twelve respectable householders. But seven years later, in 1825, it took twenty-four witnesses, and they all had to be freeholders. But this proving inconvenient, three years later, 1828, the traffic was on top, and twelve were enough; but, as they all had to live in the town or township, it was not much of a victory, especially since, if a majority of the freeholders remonstrated, there should be no license at all. Four years later the traffic was again on top, for, though it again required twenty-four freeholders to prove the necessary facts, they could go anywhere in or out of the town to get them, though still a remonstrance of a majority of freeholders could exclude taverns altogether. And this tussle has continued to this day, with the traffic most frequently on top.

An incident in this connection will explain the opinion written in 1840, by that able jurist, Judge Sullivan. The sober people of Brookville remonstrated at once for all, and prayed for prohibition for three years. This brought the case before the Supreme Court, on the argument that each application should be remonstrated against in detail, and for only a year at a time. Who doubts that if the principle on which that opinion was written had governed all later courts, the traffic, instead of being our master now, would have been at least under control? The learned judge asserts that it is the duty of the court to construe the law in the interest of society, not of the traffic.

SONS OF TEMPERANCE.

The tide of Washingtonianism, which rose so high in 1841 and 1842, soon began to subside, but it had wrought. It had brought happiness to many a desolated home, for a

season; but, with tippling-houses on every hand, very few of those who had formed habits of inebriation could resist the temptation to drink, and it seemed probable that again drunkenness would prevail. On this ebbing tide the Sons of Temperance were organized, and for a decade became the conservator of the temperance work. The organization found a well prepared soil in the hearts of thousands who, with sorrow, were witnessing the returning reign of drunkenness. Good men went into the order by the thousand. It found friends and advocates in the most cultured circles. Leading preachers, lawyers, doctors, merchants, and even politicians, were found working in it, and in less than five years more than four hundred Divisions had been organized in Indiana alone.

A PERIOD OF LOCAL LEGISLATION.

A glance at the liquor legislation of this period is interesting. It was within these five years that those numerous attempts to obtain local prohibition were made—now a town, now a township, and now a county—until, by one sweep in 1847, a general law was passed that if a majority of all the votes of any township should vote no license, then there should be none for that year in that township. It was something of a concession to the temperance sentiment, but still recognizing the right to keep a tippling-house as a natural one; but it was more than neutralized by the insignificant penalties for selling without licenses.

It is an interesting fact, which may as well be mentioned here as elsewhere in this history, that from the first to the very last, every temperance organization has started out to ignore politics and save the world wholly by moral suasion, and that they have always found friends and advisors in that large class of "good temperance men" who never attend temperance meetings, or contribute to the cause anything more substantial than good advice. The Sons of Temperance were no exception to this. They assured every candidate before entering the room that the ceremonies and duties of the order should not interfere with his political views, be they what they may; hence when, at the Grand Division held at South Bend in July, 1848, it was proposed to memorialize the next leg-

islature to so amend the liquor law that no votes should be counted for license unless expressly so cast, the proposition was voted down by a large majority. "Our mission is to save the fallen" was the pious purpose of the order, as then interpreted. But the Sons of Temperance, like every other temperance organization, before and since, got bravely over such namby-pambyism. Nine months later, at Evansville, the Grand Division resolved unanimously to take steps looking towards prohibition, and from that day until the prohibitory law of 1855 was enacted it never faltered.

MORE STRINGENT LAW DEMANDED.

Higher and still higher the sentiment in favor of more stringent legislation rose. It will be seen by studying the law of 1853 that it was a mosaic, composed of gems from the several local laws which had been tried in many townships and counties of the State, and if it could have been sustained by the courts it would no doubt have done much good for humanity. It worked admirably while it was permitted to work. But it fell. It is too late now to criticise the reasoning of the court which first robbed it of its local option feature, and then, little by little, dismembered its license features, and finally declared it null and void in toto.

THE CAMPAIGN OF 1854.

What followed is a history worth studying. It was mid-summer when the hastily prepared and hastily decided case of *Maze v. The State* struck the fatal blow. It was soon followed by a series of crusades by women—not crusades of prayers and songs, such as was the fashion twenty years later, but crusades of hatchets and axes. Fifty women, headed by a resolute girl, went forth at Winchester and destroyed several saloons, and similar appeals were made in behalf of sobriety at Cambridge City, Centreville and elsewhere.

The Grand Division met soon afterwards in its annual session. It was composed of many of the leading men of the State. Dr. Ryland T. Brown, then in the vigor of mature manhood, was elected Grand Worthy Patriarch, and was requested to devote as much time as possible to a canvass of the State for prohibition, after a model of the Maine law, and pro-

hibition became the watchword everywhere. It was preached from the pulpits and declared from the platforms, so that early in the following January the temperance people held a convention in Masonic Hall and raised twelve thousand dollars in a short time for a thorough organization of the State on the issue which the liquor interest of the state had thrust upon them. They appointed an effective State Central Committee, opened an office in Indianapolis, and proceeded to organize for the campaign, with the legend, "Search, seizure, confiscation and destruction" flying from their pennants. Every county was organized and allegiance to all political parties was distinctly renounced, so that by the first of May the temperance element of the State was well in hand.

Meanwhile that political monstrosity, known as Know Nothingism, began to be developed. It had few friends at any time as a crusade against foreigners, but it having been only three years since unnaturalized foreigners were made voters in Indiana, and the fact that nine-tenths of the keepers of tippling houses were foreigners, and were already demanding favorable legislation in behalf of their business, gave it a place in the political world that it never would have had but for its avowed sympathy with prohibition; hence it became the nucleus around which the temperance element clustered. Still later, the anti-slavery element came into the compact, which was known, derisively, as the "Fusion Party," but called by its friends the "People's Party."

With yet no state organization in the field but the prohibition organization, the Democratic party held its nominating convention on the 24th of May, 1854. Its attitude towards the temperance question was set forth in the following resolution: "*Resolved*, That we are opposed to any law that will authorize the searching for, or seizure, confiscation and destruction of private property."

This was a signal for an open revolt of the temperance element of the Democratic party; always a much larger force than mere politicians have counted on, and never unavailable when the temperance question has been sharply and honestly made an issue.

County and township meetings of Democrats and others

were held all over the state. One was held at Madison on the 13th of June. While it took strong ground against the pro-slavery attitude of the late Democratic convention, it was no less pronounced on the temperance question. The following was its resolution on that subject: "*Resolved*, That we can not stand on the Democratic platform of May 24th, because the Democracy is thereby pledged to the extension of free whisky."

A similar convention was held at Lafayette July 1, which unanimously adopted the following: "*Resolved*, That we regard intemperance as a great political, moral and social evil, and that we favor the passage of a judicious and effective prohibitory law." The former convention was addressed by M. C. Garber, Esq., Col. J. A. Hendricks, Rev. David Stiver, and others; the latter by Dr. McFarland, G. S. Orth, Dr. Demning and others. These are but specimens of the conventions held in May and June and the first half of July. One or more was held in every county.

Later, on the 13th of July, there was a nominating convention at Indianapolis, called "the People's Convention," composed of all who were opposed to the general policy of the convention of the preceding 24th of May. The Know Nothing organization was there, though but few were in sympathy with its avowed dogma. Old Whigs were there, and Democrats who were opposed to the pro-slaveryism of the party; and temperance men of all former political creeds were there in force. Conspicuous among the late Democrats was Oliver P. Morton, who made one of the speeches of the occasion. Though he dwelt principally upon the Kansas-Nebraska outrages, and the general pro-slavery trend of the Democratic party, he gave a cordial approval of the temperance movement. As a representative of the churches and the temperance cause, Rev. George B. Jocelyn, a talented young Methodist preacher, who afterward became an eminent educator and divine, was put forward, and his speech was of the most radical type. The result of the convention was the nomination of a ticket, the *personnel* of which was entirely acceptable to the temperance people, with one or more representative temperance men on it, and it adopted the following resolu-

tion: "*Resolved*, That we are in favor of a judicious constitutional and efficient prohibitory law."

The temperance bearing of the convention and of the canvass was indicated in the Indianapolis *Sentinel* a few days after the adjournment. It said: "The ultra temperance men, in their speeches and through their organs, declare in favor of search, seizure, confiscation and destruction;" and the *Sentinel* never told the truth more truthfully. During the canvass which followed some of the speakers dwelt chiefly on the arrogance of slavery, but not one of them blinked the temperance issue, or by word or deed spat upon the temperance plank. Not one advocated Know Nothingism, but rather rebuked it.

Among the men that made Indiana vocal that year with their general denunciation of the party that had dared to declare in favor of free whisky, were such men as Henry S. Lane, Caleb B. Smith, Charles H. Test, Godlove S. Orth, Schuyler Colfax, Conrad Baker, David P. Holloway, John A. Matson, P. A. Hackleman, and scores of others who subsequently became men of renown in State and National politics, and no less renowned on the tented field. The preachers of all denominations were a unit, with probably less than a dozen exceptions, all told, most of whom afterwards came to grief through wine or women, or both. And the labors of these preachers were not confined to their pulpits, but by solicitation of politicians many of them addressed large political conventions upon the twin iniquities, whisky and slavery, which the Democratic party had undertaken to champion, but they especially denounced whisky.

Among the champions of that battle worthy of special notice was Dr. Ryland T. Brown, the Grand Worthy Patriarch of the Sons of Temperance, the organization under whose management the temperance features of the campaign were planned and executed. Its four hundred divisions, dotting the state, had got bravely over the moral suasion stage which all temperance organizations take badly, at first, and, with only here and there an exception in some politician, they were a unit for prohibition. Early in the summer he visited Maine to personally inspect the practical workings of the

Maine law. He found it everywhere a success, though defective in stringency at some points, which have been remedied from time to time, by subsequent legislatures. He returned full of enthusiasm in the cause of prohibition. It struck him as correct in theory and wonderfully successful in practice. After his return he devoted himself to the canvass, not merely under the auspices of the Sons of Temperance, but by frequent invitation of the Central Committee of the "People's Party." So far were they from dodging the temperance issue that they courted the temperance vote, not only by giving it a fair representation on the ticket, but by encouraging its representative men to hold special meetings in its interest and to take a part in the general meetings of the campaign. His trumpet gave no uncertain sound that year. It never has since. In all these years of backsliding and temporizing he has kept his eye steadily fixed upon prohibition, as the only thing worth laboring for by temperance men. Speaking as a doctor, he is wont to say that no other remedy will reach the disease. "All patent medicines that have not prohibition as their basis, such as local option and well-regulated license laws without adequate penalties, are utterly insufficient. The case requires heroic and *constitutional* treatment. The amputation of one claw, or one foot or one leg of the monster will not do; the amputation of the head is the only thing that will insure a permanent cure." He yet lives, enjoying a green old age, hardly conscious that three-quarters of a century ought to make some impression upon his physical if not upon his intellectual powers, looked up to and revered by the entire temperance host of the state, except a few recent converts or young workers who imagine that they know it all, and that nothing was ever done until they came to the front, and that nothing will remain to be done when they are through.

RESULT OF THE CAMPAIGN.

The election came, and the temperance candidate for Secretary of State had a majority of 12,623 over the free whisky candidate, and fifty-six out of the one hundred representatives, and fourteen out of the twenty-five senators elected that year were pledged to prohibition. Speaking of the result, the

Indianapolis *Sentinel*, which had teemed with abuse of the preachers during the entire summer, on the 14th of October, said: "The temperance question was brought to bear with terrible force. At the time of the Democratic convention last May we questioned the policy of the resolution on temperance. Ministers of all denominations used every exertion in their power to prejudice their members against the Democratic party." And the *Sentinel* might have added, very truthfully, that they succeeded wonderfully. Three days later, in accounting for the disastrous overthrow of the Democratic party, it said: "We had to fight the church, the flesh and the devil; the church, in the temperance question; the flesh, in the old Whigs, and the devil in the Know-Nothings. The legislature has the power to pass the Maine law." Adding, as showing the prominence of the temperance question in the campaign: "If the people have decided in favor of the measure, let their will be the law of the land."

With such a canvass, with such results, the passage of the prohibitory law of 1855, just as it had been previously prepared by the temperance men, modeled after the law of Maine, was an easy matter. When it was presented to Governor Wright for his signature, he said: "I have no doubt of its entire constitutionality, hence I can not object on that ground, and I certainly can not on the ground of hasty legislation, for no question was ever more thoroughly discussed before the people," and thus it received the official approval of the most popular Democratic governor that Indiana ever had.

THE WORKINGS OF THE LAW.

Such is a history of the passage of the law. It was to take effect on the 12th of June, and it took EFFECT! On the morning of the 13th every saloon in Indiana was closed, and crape was hung upon many of the doors in token of bereavement; and not a single saloon was opened for public business from that day till the 8th day of the following November. Speaking of the workings of the law in Indianapolis, the Indianapolis *Sentinel*, of the 15th of June, said: "The temperance law, so far, has been universally and faithfully observed. We hear of no disposition to violate its provisions." And the

local editor, the same day, said: "The new liquor law has knocked police items into a cocked hat. Not a single item is to be obtained now on account of John Barleycorn." Recurring to the subject again on the 20th, it said: "That the people of Indiana desire and will have a reasonable and constitutional law for the suppression of the evils of intemperance, none are blind enough to deny." Recurring again to the same subject, on the 28th of June, it said: "During the past fifteen days there has not been a single commitment to the county jail for the violation of city ordinances, and in the way of arrests by the city police, there is little or nothing doing!"

The Indianapolis *Locomotive*, of the 23d of June, said: "There has not been a single arrest or commitment to prison since June 12th. The Mayor sits quietly in his official chair, and the night watch doze on the store boxes." Such was the peace and order which followed, that on the 12th of July, just one month after the taking effect of the law, the Indianapolis Council reduced the night watch one-half. Referring to this fact, the *Locomotive*, of the 21st of July, said. "The temperance law has nearly abolished rioting, drunkenness and rowdying, and the tax-payers are reducing their expenses." The *Journal*, referring to this reduction, in its issue of July 24th, said: "The reduction of the night watch was on account of the diminution of disturbance and drunkenness from the enforcement of the prohibitory law." The Indianapolis *Evening Republican*, of the 29th of June, said: "Rummeys no longer perambulate the streets, making night hideous; and the watchmen have little to do." The *Journal*, of August, 20th, said: "The law diminished crime, reduced drunkenness, saved money and emptied jails until the Supreme Court took hold of it." It was the same everywhere. The *Sentinel's* New Albany correspondent, of June 24th, said: "The liquor law is generally and faithfully observed in this section of the State;" and the New Albany *Tribune*, of the 27th, said: "The sixty or seventy saloons of this city have been closed for two weeks." The Lafayette *Journal*, of July 2d, said: "Since June 12th the Mayor's court of this city has been almost deserted. Our jail is now clear of all corporation prisoners, and the good effects

of the law have been felt at many firesides." The Madison correspondent of the *Indianapolis Republican*, July 3d, said: "The liquor law works like a charm. Sorrow and sighing have fled away. Liquor can not be purchased illegally in this city." The *Lafayette Courier*, of July 2d, said: "What words can express the heart-felt gratitude of those whose happiness has been promoted by the enforcement of the prohibitory law;" and the *Bloomington Times*, of July 3d, said: "We have not seen a drunken man in town, or heard of a single fight or quarrel since July 12th." Such was the testimony everywhere.

The law worked like a charm everywhere; sorrow and sighing were diminished everywhere. Men came to town and returned sober who had not done so for years, and no class of men hailed it with more delight than that class whose appetites had such mastery over them that they could not resist the temptation when liquor was within easy reach. They had pleaded for the law and they greatly rejoiced in the protection which it afforded. Drunken men were never seen in the smaller towns, and but few in the larger, and it is to this day the boast of several counties that not a single case of drunkenness was known during the hundred and forty-eight days of its continuance. Though one Beebe had procured himself to be nominally imprisoned for the purpose of making a case before the courts, yet not even he dared to sell openly. That he and others did sell clandestinely, none deny. But the law had placed the keeping of tippling houses on the same footing of other crimes and sought to suppress, not to license and protect it, and it succeeded as well as the law against adultery, and gambling, and larceny, and murder ever did. It was the fact that it was enforceable, and was enforced, that arrayed against it the mighty power of the traffic.

THE ANNULMENT OF THE LAW.

There is some history about the annulment of this law that deserves to be rescued from oblivion before those who know whereof they speak pass away. Even before the bill had passed, some preliminary steps to annul the law by the courts had been taken, and the echo of the cannon which was fired on the final passage—for everybody knew that it would pass that

afternoon, and men by the hundreds, who could not get into the hall, had congregated in the open grounds north of the old State House with cannon, to give expression to their joy, and they fired round after round—the echo of that cannon had hardly died away before the most eminent legal talent in the State had been employed to destroy, by the courts, what the people had so emphatically demanded at the ballot-box, and they at once began to prepare a case, and to prepare arguments for the courts; so that when, on the 12th of June, it went into effect their plans were already perfected and their arguments in readiness.

In pursuance of the programme, on the 2d day of July, one Rhoderick Beebe, the tony saloon-keeper of Indianapolis, openly manufactured and sold beer. He was forthwith arrested and taken before the mayor, and fined fifty dollars. Refusing to pay, he was hypothetically committed to jail, whereupon he sued out a writ of *habeas corpus* before the Marion Court of Common Pleas. The court sustained the law, and an appeal was taken to the Supreme Court to try the validity of the law. It was mid-summer, and the court had taken a recess for its summer vacation, but swift messengers were dispatched and the court was brought together in less than a week. On the 8th all were in the city, and early on the 9th of July they were listening to the arguments which had been five months preparing on the part of the traffic, while the counsel for the State had to take hold of the new questions with but a few days' notice.

The final result of the case is history. The attorneys for the State asked time to prepare their arguments, and the court adjourned till the November term.

But the traffic grew impatient. The law was everywhere manufacturing public sentiment in its behalf by its happy results, and the liquor sellers demanded immediate action. Meanwhile Judge Perkins had repeatedly forshadowed his opinion. As early as the 12th of March he had written to the Richmond *Jeffersonian* and published over his well-known initial, "P," a tirade, first against Governor Wright for signing the bill, then against the law itself. The tone of the letter

may be inferred from this one sentence: "It may be enforced here, but it could not be in any despotism in Europe without producing revolution." And his conversations on the streets and everywhere abounded with such choice illustrations as this: "Why, the State might as well appoint a commission to do all the begetting of children and make eunuchs of the rest of us, as to appoint a commission to do all the liquor selling." In order to bring an influence to bear upon the subject, a meeting of the leading Democrats of the State was called for the 27th of August. On the preceding Friday, Judge Perkins called his colleagues to meet in chambers on the 23d, and to decide the case. Judges Gookins and Stuart refused to come, as Judge Perkins had no right to make such a call. The Democratic meeting was held on the 27th, and a series of resolutions was adopted denunciatory of the law, and one urging the court to hurry up the decision in view of the demoralization of business as the law stood. About the 1st of November Judges Gookins and Stuart signified a desire to have certain points re-argued when the court should convene in November. This alarmed the traffic. It might mean a divided court, and it might mean many additional months of deliberation. Something must be done, and that at once. In this emergency a parley was held at the Bates House saloon on the night of the 7th of November. Whether Judge Perkins was present or not, was never known outside of that little coterie; but the conclusions of that consultation were soon made public. Early on the morning of the 8th, a boy of the saloon, by the name of Herman, openly violated the law. By those in waiting he was at once hustled before the mayor, where he was fined, and on refusing to pay the fine he was sent to jail. He was hardly in before he was out on a writ of *habeas corpus*, issued by Judge Perkins, who sat in his judicial chair before 2 o'clock ready to try (?) the case.

The attorneys for the liquor sellers proposed to submit the case on the argument in the Beebe case, and the attorneys for the State, comprehending the situation at a glance, consented. The judge repeated a few of his arguments against the law that had appeared months before in the *Richmond Jeffersonian*, and had been often expressed on the street,

and concluded by saying, "The law is void, let the prisoner be discharged." That was the decision, not the decision in the Beebe case, that unlocked the doors of the saloons now five months closed. On discharging the prisoner he said that he would write out his opinion in a few days and have it published. Four days later it appeared in full in the Indianapolis *Sentinel*, very much as originally delivered off-hand, and was copied the next day into the *Journal*, "revised and corrected by the author," and at his own request. Two years later it appeared as an appendix to the Eighth Indiana, surreptitiously inserted by Gordon Tanner, and not even indexed; Albert G. Porter, the Democratic Reporter at the time, refusing to print it in the *Sixth*, as it was in no proper sense a Supreme Court opinion. But, as great as was the outrage upon the State at the time, thousands will be thankful that it is thus preserved, in every county, and in every law library, that those who are to come after in this unending conflict, may know what kind of stuff passed for grave argument when the first prohibitory law of Indiana was on trial. As published, it is substantially the same as appears in the Beebe case, though many a sentence that gave spice to the off-hand speech, on the occasion, to the rabble that gathered to see the law overthrown, is omitted. Its existence at all will be news to hundreds of eminent lawyers of to-day, so quietly has it slept all these years.

THE CONSEQUENCES.

The news of this decision was "telegraphed to the boys" at once and reached every town then on the line of the telegraph before four o'clock, and one universal carouse followed, making the night hideous, and resulting in a murder before midnight at Columbus. More drunken men were seen in Indiana within five hours after the decision was rendered than had been seen in five months of the existence of the law, and there has not been a day since, Sundays not excepted, in which more drunkenness has not disgraced the State than during that entire period of one hundred and forty-eight days. For twenty-seven of those days the Marion county jail had not a single prisoner, and for seventeen other days, but one,

and he was committed for an offense not connected with liquor—a state of affairs never known before or since.

But the younger men will ask, was there no whisky sold and drank during those months? Of course there was. No one ever expected anything else. The law did not contemplate anything else. Those who could, in anticipation of the coming drought, had plentifully stocked their cellars, but those who did not do this and were skilled in the methods, still found means to get it. Cincinnati and Louisville and Chicago were connected by rail with Indiana, and there was no prohibition in those cities, hence by one device or another liquor was obtained from those and other outside places as well as legally at home. Many of these devices were curious enough. John L. Robinson, of Rushville, then the United States Marshal, and the managing editor the *Jacksonian*, and for many years the Democratic Congressman from that district, ordered a keg from Cincinnati for his private use, and it evaded the search, seizure and confiscation clause by being marked "Lard Oil," and the poor man was ever afterwards known as John Lardoil Robinson. But men of less money and even less cunning found means of getting liquor. Why should they not? With all our bolts and bars and burglar-proof appliances there are men who break into our houses and rob us. They make the business a study, but the millions do not get in, however much they may desire to. Everybody knows that men will go to extremes for whisky that are unknown in almost everything else. Men will swear falsely for whisky, and in the interest of the whisky seller, who would not, to save the life of a wife or child. Men will rob their families of food, take even their wife's shawl or shoes and pawn them for whisky, so utterly overpowering are their depraved appetites. Does any sane man imagine that such men can not find whisky, under any law? More than that, prohibitory laws, when analyzed and properly understood, aim only at suppressing these schools of vice known as dram shops. If, in accomplishing this, it becomes necessary to make more difficult the procurement of liquors for the less harmful use of them the fault lies more in the stubbornness of the traffic than in the purpose of the law. Prohibition is

simply a generic name applied to that class of temperance legislation which contemplates the absolute suppression of public tipping by whatever measures may be necessary. If, therefore, it shall ever become necessary to wholly forbid the manufacture and sale that this may be accomplished, then all that and more may be expected; and as slavery defied all modifications and required utter abolition, so, probably will the liquor traffic. There were several cases of "search, seizure, confiscation and destruction" under the law. The lower courts nearly all, or quite all, enforced the law. Notably among these was the Common Pleas Court of Tippecanoe county, presided over by Hon. John Pettit, one of the best lawyers Indiana ever had, and afterwards a member of the Supreme Court, elected by the Democratic party. The number of appeals from his court, which will be observed in the decisions of that period which follow, is thus accounted for. The legislature of 1859 which repealed the law, provided for reimbursing all who had suffered in its enforcement.

TEMPERANCE CONVENTION 1856.

Two months after the decision of the court, the annual temperance convention met in Indianapolis. It was every way a sad contrast with that buoyant, hopeful, warlike convention which had, two years before, girded on the armor for a hand-to-hand fight with the foe. It was composed of a part of that same army, but the sadness of a funeral rested upon every one. When, a year previous, they had met to strengthen the hands of their servants in the legislature, and had adjourned to meet February 22, 1856, they hoped to be able to rejoice in their victory by recounting the success of the law of their choice. When assembled, Dr. Ryland T. Brown was called to the chair. The sadness of the hour tinged the first part of his opening speech, but as he warmed with his theme and discussed the dilemma in which the court had placed the cause of prohibition, he gradually rose to the demand of the occasion and said: "Gentlemen, our hands are tied. Whether we approve or disapprove, the decision of the court is, for the present, the law of the land, and we must submit. But, gentlemen, the people are sovereign in this country. They not only make

laws, but they make constitutions, and they make courts, and I now and here notify the rum-power of Indiana that the people of Indiana will make a constitution that will not only tolerate prohibition, but will command it, and they will make a court that will construe it in the interests of society and humanity, and not in the interest of a handful of liquor sellers and drunken politicians." How that seed-thought came to sleep a quarter of a century will appear further along.

A SAD CHAPTER.

The chapter which follows is a sad one. The annulment of the law, as first construed, left a fragment of the law of 1853 in force. Judges Stuart and Gookins refused to decide that a law, so unconstitutional and emasculated as Judge Perkins had pronounced this law of 1855 to be, could yet be effective in repealing the mere fragment which the former decision of the court had left of the law of 1853. But it was merely a fragment and wholly worthless, so that when in January, 1859, the new court hastened to pronounce it utterly void, no perceptible difference in the traffic was experienced, and the few cases that remained under it were summarily dismissed, as will be seen by the decisions of that period. It was practically a three years' reign of free whisky with all that that implies; with the whisky power arrogant and defiant in the consciousness of its security under the wing of that court, and with the temperance men disheartened because, at best, the hour of their deliverance must be far hence.

CAMPAIGN OF 1856.

Under these circumstances the Democratic convention of 1856 met, and adopted their time-honored resolution of bitter hostility to temperance legislation in general and to prohibition in particular. Soon afterward the Republican convention met. It adopted, with great unanimity, a prohibitory resolution, almost in the exact words of 1854. But that was the last of it. It was not once mentioned in the discussions of the campaign. No preachers were invited to address political meetings. Temperance, which, two years before had, more than anything else, carried the opposition to a signal victory,

was denominated a "side issue," not to be tolerated in a national party, such as the Republican party had become. In lieu of the war cry of 1854, "search, seizure, confiscation and destruction," was the euphonic cry, "free speech, free press, free soil and Fremont." The rest of the story is soon told. Thousands of Democrats who had left their party because temperance was in issue, returned to their first love, and all of that class of temperance soldiers who are good at a dash, but scorn patient endurance in well doing, went also. What cared they for prohibition if it meant years of conflict? The world is full of such. Many a man believes in life insurance and takes a policy for thousands in hopes that he may die soon and make a good thing of his investment—a real speculation—but if it means to pay premiums year after year he gives it up and pronounces life insurance a fraud. It can not be denied, therefore, that in the years immediately following the overthrow of the prohibitory law of 1855, there were many who were zealous while they thought that was the winning side, and that the millenium was in sight, who went back and walked no more with us, and many of this class are there yet. The result of the election was what might have been expected. The majority of 12,623 of two years before when temperance was a large factor, was turned into a Democratic majority of 8,191, notwithstanding the increasing arrogance of the slave power and the multiplied outrages in Kansas, which were relied upon as a compensation for an abandonment of temperance.

DURING AND FOLLOWING THE WAR.

This must be said of the temperance question for the twenty years following the successful canvass of 1854. The disturbances in Kansas, the repeal of the Missouri Compromise, the Dred Scott decision, and the thousand other arrogant demands of slavery forshadowing the war; then the war, and then the questions growing out of the war, all appealed so directly to the material interests of the nation that it was impossible to induce men to give a question which so many are ready to believe can not affect them or their families, such prominence as to make it effective.

During the war, therefore, but little was done in the cause

of temperance, and it is not wonderful that drunkenness ran riot. The law of 1859 had been passed in the interest of the traffic under the demoralization which is sure to follow a signal defeat, and it interposed no barrier to the returning tide of intemperance. It was not intended to hinder, but rather to favor tippling houses. It succeeded the three years of free whisky and no perceptible difference as to drunkenness was observed, in town or county. Its penalties were insignificant, and its pretended restrictions were hedged about with innumerable difficulties, so that under it the tide of drunkenness rose to an alarming height. Not only in the army, away from home restraints, did many a former temperance man of influence fall a victim to his appetite, but out of the army the love of liquor invaded many a home and carried hence many a victim. During these years the Good Templars were almost the only living organized protest against intemperance, and the war had taken so many of its male members to the field that its work was done mostly by the faithful women, who kept up the form of the organization under every discouragement. Meanwhile, politicians seemed to forget that there were any temperance men left. Year after year petitions were presented to the legislature for relief, but they were scorned because, if there were any temperance men, they were too much devoted to their respective parties to resent any neglect.

LATER TEMPERANCE MOVEMENTS.

In June, 1868, a call was issued for a convention to organize a State Temperance Alliance, to be composed of temperance men and women of the churches and Sunday schools, and such organizations as might yet remain. Its mission was to unify efforts in the work of legislation, and that only. At one time it had considerable influence, and it did much to preserve, if it did not create a further desire for some better law. Under the delusion that prohibition could be reached by approaches, and that little by little the traffic could be outflanked, the work took the direction of what was popularly known as "local option"—give every town prohibition that demands it by a majority, and leave all other towns to the tender mercies of the traffic.

This work so far progressed that in 1872 enough temperance men were elected to the legislature, without making the question one of public discussion in the canvas, to secure the passage of the law of 1873. It was voted for in the legislature by men of both parties, but chiefly by Republicans. It was a surprise to the traffic, and was intended to be a concession to it by allowing it to exist wherever a majority favored it. But the traffic would not tolerate even this. True to the philosophy of such a movement it arrayed itself as solidly against such a half-way measure as it would prohibition pure and simple, and the liquor sellers arrogantly demanded its repeal, and they were in a condition to make their demand effective. In vain the temperance men pleaded the right of a majority to govern, the traffic would concede no such a right as against it. It was too much in earnest for that.

The law went into effect and for a few months proved to be a vast improvement on the law of 1859. It almost wholly suppressed the traffic in many counties, and reduced it, at first, in all. But it had been emasculated in its passage and was without suitable penalties, and though sustained by the courts, on the local option feature, it was little by little annulled by first striking out this section and then that, and it was fast becoming inoperative when it was repealed and the law of 1875 took its place.

The method of this repeal is an important item of history and full of suggestions for the future. Though the law was passed irrespective of party, and over the votes of many Republicans, and by the aid of many Democrats, the great body of its supporters being Republicans, that party was held responsible for the law, and the traffic at once arrayed itself against the Republicans; they parrying the accusation in every possible manner.

CAMPAIGN OF 1874.

The Republican Convention of 1874 met on the 17th of June. Before it, without invitation, the German editors of the State came, representing, as they alleged, the German voters of the State. They did not claim to be Republicans—only Germans, and they pledged themselves not to assist any

candidate who was known to be in favor of the existing law, but to use their influence in favor of the organization that shall pledge itself to modify or abolish it. The threat was disregarded by the convention and a resolution was adopted practically endorsing the law and the principle of local option. But they nominated a ticket, all of whom, with one exception, were hostile to the law; at least they said not a word in its favor during the canvass, but evaded and dodged the issue everywhere in their attempt to secure the German vote, and they spoke of the law as uncalled for and fanatical. In this respect it was the canvass of 1856 over again.

The Democratic convention met four weeks later. The same German editors presented the same alternative. It was responded to by a ringing resolution, declaring the temperance law a failure and of doubtful constitutionality, and pledging the party, if elected, to its repeal and the substitution of a law that should bring a revenue to the school fund; and a ticket was nominated in sympathy with this declaration. The consequence was that at every Democratic meeting during the year the law was denounced, and the beauties of a license law extolled.

The result was what any student of the philosophy of parties might have anticipated: one party had all the enthusiasm of an aggressive, positive policy; it gathered to it all the element that favored the traffic, while the other party labored under the disadvantage of a retreating, cowardly army, begging pardon of everybody for existing at all; hence the Democratic candidate for Secretary of State came to the front with a majority of 17,093, and the legislature was Democratic in both branches. Of course, that local option law was repealed, and a well regulated license law—the present law—took its place; the traffic again most signally on top in the tussle.

LATER TEMPERANCE WORK.

Meanwhile there were agencies at work which were to exert no ordinary influence upon the question of temperance. At Hillsboro, Ohio, and at Shelbyville, Indiana, without either knowing of the other, about Christmas, 1873, a band of praying women, who had met for weeks to pray in behalf of

their husbands and sons, marched from their prayer-room into the streets, and to the most prominent saloons, and began to sing and pray in the saloons and in front of them. The news of these strange proceedings spread like wild-fire, and in a few months praying women were found in every town, singing and praying in or near the saloons. No clap of thunder in a clear sky ever more surprised a people than this unexpected assault. The traffic trembled. No one could tell what was to come of it, and many actually closed business. This was familiarly known as the "crusade" movement. But it could not last always in that form; the women became tired, and the traffic became insolent. In many cases the police arrested the women for obstructing the sidewalks. But such was its success for the first few months that not a few claimed that the prayers and songs of women were to be to the traffic what the less musical horns that Joshua used had been to Jericho, and the women were ready to take the contract of reforming the men and suppressing the traffic without resort to such carnal weapons as ballots and prohibitory laws.

Though a failure in this hope, that crusade proved a grand success. It not only developed most wonderful talent for speaking, where such talent was little suspected, but a talent for organizing and the power to endure patiently and work unceasingly, until to-day the Women's Christian Temperance Union is one of the most effective temperance organizations of America, and, having been converted, it is a most wonderful strengthener of the brethren who are laboring for prohibition.

About the beginning of 1877 a reformed drunkard at Pittsburgh began to work for the reformation of drunkards. It proved to be a second Washingtonian movement, and in a few years thousands had been reformed. It was familiarly known as the "Ribbon" movement, so-called because each member tied a ribbon in his coat or vest. It, too, started out to do the work without the aid of law. But, like all of its predecessors, it soon found its reformed men again in the gutter. Licensed saloons everywhere were too much for them, and this force soon became prohibitionists. After tarrying long enough in the local option camp to discover that

the traffic would resist any and all mild restraints as vehemently as it would prohibition itself, and that any so-called local option law that was not, by its penalties, practically prohibitory where applied, was a delusion, it became the leader of the prohibition movement.

In November, 1876, an Indiana Prohibition League was formed, the purpose of which was to labor for prohibition. Without antagonizing those who yet thought local option possible, it aimed at educating the people to the doctrine of prohibition, and it is still a power in the work.

In October, 1879, a Grand Council, composed of temperance men and women of all organizations, was formed for the purpose of unifying all work. Though composed largely of those who had just passed through the preliminary stage, it, too, had to linger a little season at the half-way house of local option; but it soon gave that up, and it was through it chiefly that the constitutional prohibitory amendment of 1881 was proposed.

CAMPAIGN OF 1880.

The legislature elected in 1880 was not voted for on the temperance question at all. Men more or less favorable to temperance legislation had been nominated on the respective party tickets and had run with their respective party strength, the temperance people relying upon petitions. Finding that any local option law that could be effective was as stoutly resisted by the traffic as prohibition itself, and believing that to be impossible under the constitution, the petitions, to the number of about 46,000, asked for the submission of a constitutional amendment, and the proposed amendment passed the first stage by a small majority in each house, several who voted for it announcing their personal objection to the amendment, yet a willingness to have the people vote upon it. The vote was not on party lines.

The immediate effect of this step was the organization of an anti-prohibitory league by the liquor interest of the State, at first secretly, but in due time it was openly announced. Its first blow was struck in the township elections in 1882. These nearly all resulted in the election of Democrats, even in the strongest Republican townships; the Democrats having

meanwhile renewed the pledges of 1874 and 1854, while the Republicans made no pledges either way.

CAMPAIGN OF 1882.

Thus matters stood when the Democratic State Convention assembled, August 3, 1882. From the cities the league had sent anti-prohibitory delegates, and the convention adopted, under the operation of the previous question, and therefore without debate, the following resolution: "The Democratic party is now, as it always has been, opposed to all sumptuary legislation, and is especially opposed to the proposed prohibitory amendment, and we are in favor of submitting said amendment according to the provisions of the constitution for its own amendment, and we believe that the people have a right to oppose or favor all amendments at all stages of their consideration." This resolution was construed by the speakers of the convention to mean the right to refuse to agree to it at the ensuing legislature. Consistent with this declaration of principles, the convention nominated a ticket thoroughly opposed to the amendment, the *personnel* of which would in no sense suffer by comparison with the Republican ticket nominated a week later. In some rural districts the platform was construed into a readiness to submit the question at a regular election, but no one advocated prohibition as right in itself, but, contrawise, it and all forms of temperance legislation were denounced on all occasions, except in those rural districts.

"A week later the Republican convention met. It said nothing for or against prohibition, or any kind of temperance legislation, but it resolved in favor of submitting the proposed amendment to a vote at a special election, and then it nominated a ticket, not one of whom opened his mouth during the entire canvass in favor of temperance legislation in any shape, but some of whom publicly opposed the prohibition amendment on its merits. The only word of favor that was spoken at the convention was omitted from the published speeches, lest it might be construed into favoring prohibition by the party.

It required no prophet's ken to foresee the result. The

Democratic party drew to its support the entire liquor interest of the State. At one time three thousand dollars was sent by the National Liquor League to a late Republican brewer at Indianapolis, to be spent in the interest of the Democratic party, and the money of the traffic was spent freely everywhere to defeat the Republicans, because they had proposed to submit the question to a direct vote of the people, and Republican business men, as well as Republican politicians, were ostracised by the traffic in every possible way. On the other hand, with no State candidate's "bugle call" inviting even Republican temperance men to rally for their cause, and only here and there a legislative candidate avowing himself in favor of the amendment, there was no enthusiasm in the temperance ranks. Those who were Republicans generally voted the ticket with a silent protest, scratching here and there the most pronounced anti-prohibitionists. If any temperance Republican, more enthusiastic than the average, asked a Democratic temperance neighbor to vote for the Republican ticket because the Democrats had openly announced their hostility to temperance legislation, and especially to prohibition, he was asked if the Republicans had declared in favor of either, and each was thus left to vote his old ticket with a protest—one because his party was in favor of free whisky, and then because his party was not opposed to it.

The result of the election was, of course, a Democratic majority in both branches of the legislature, and a Democratic plurality on the State ticket of 10,924, against a Republican plurality in 1880 of 6,593. Of course, the amendment was not submitted.

Though the amendment was not agreed to so as to be submitted to the people, the action, or rather non-action, of the legislature of 1883 was of the utmost importance to the temperance cause. There has been, all these years, a class of temperance men who are quite as sincere as any, and whose opinions are entitled to the utmost respect, who, accepting the erroneous conception that prohibition means the absolute suppression of the traffic in all its forms, or an attempt at such a visionary purpose, have clamored for some modified license law, usually calling for a high license, under the theory that tippling houses, if not a necessity are inevitable, and that by

reducing the number by a licence law that should be almost prohibitory, we would accomplish all that is possible in the way of legislation. Some of these men have been occasionally very abusive of that class of temperance workers who are known as prohibitionists, calling them fanatics and impracticables, and the like, and they have heretofore kept aloof from the movements called prohibitory. Some of these, it must be confessed, are themselves dram drinkers but not drunkards, and they never intend to be, though some of them are known to be much more given to their cups than they imagine is suspected of them. But some total abstainers who have not devoted much time or money to the question have fallen in with this idea. The action of the legislature of 1883 sheds a flood of light upon this subject.

That class of temperance workers distinctively known as prohibitionists confined their anxiety and influence wholly to the prohibitory amendment. But not so these high license men. Taking advantage of the silence of the prohibitionists they proposed to remand prohibition into the very remote future by such a modification of the license law as would satisfy all but the most fanatical prohibitionists. To this end a license bill was introduced into the Senate which would render the traffic almost free, everywhere and by everybody, in any quantity, but under it there could be no place of public tippling. The details of the law would have secured this end.

About the same time a somewhat similar bill, differing in detail, was introduced into the House. This would have tolerated a few saloons, but it would have rendered midnight sales and Sunday sales, and sales to minors and drunkards almost impossible, besides throwing some other restrictions around the traffic that would have reduced the mischief of tippling houses almost to the minimum. The result was the strangling of both bills *in nidus*. The liquor sellers, through the representatives that they had elected, never allowed the bills to be even discussed in either house, showing that it is not the right to sell that they are contending for, but the right to keep tippling houses, with all that that implies; the right to sell at all times and on all days, and to any class of customers. This is the personal liberty for which they contend.

The lesson to be drawn from this is, that it is needless to attempt any half-way measures. As Mr. Lincoln said of the slavery question, "This country must be all slave or all free," so every man who studies the situation of the liquor question must now see that there must either be no tippling houses, or that tippling houses must be unrestrained. In other words, we are driven to prohibition as the only alternative. Letting it be understood then, that in the discussion of this question prohibition has meant, in Maine for thirty years, and means in Kansas, and elsewhere, only such a degree of interference with the traffic as thoroughly and absolutely abolishes places of public tippling, leaving the traffic in every other regard as free as a due regard to public safety will allow, there is nothing left but for temperance men of all shades of opinion to array themselves under the banner of prohibition.

A REVIEW OF THE FIELD.

I have thus presented the salient points in the history of the tussel with the liquor traffic these seventy-six years. I am not conscious of having omitted anything which would be necessary to a complete study of the situation consistent with the limited space allowable to such a history; nor have I knowingly distorted a single fact in order to bolster up a theory. With the facts thus presented, and with the summary of the laws and decisions herewith given, every reader is at liberty to draw his own conclusions and to determine his own line of policy for the present and for the future—whether to ingloriously surrender, or to prepare for another engagement, and if for another, when and how. In no spirit of dictation to my fellow-laborers and fellow-sufferers—for no living man has suffered more than I have—I shall calmly review the field, saying to every man, "Come, now, and let us reason together." No honest man can afford to deceive or be deceived in this matter, and no living man is disinterested in the issue. You may feel secure as to yourself. Your personal habits of total abstinence may insure you against the fate of a drunkard. But are you a man? Have you a heart? Can you see the flood of drunkenness sweeping into ruin its millions and you close your eyes and your hands? As I write

these lines the wail of distress reaches the people of Indiana from the submerged bottoms of the Ohio and the Wabash. So far not a man has sat in his hill-top home and with selfish indifference said, "Well, if men will live in the bottoms they must take the consequences, I am safe." On the other hand, the most selfish miser has done something, while relief committees have been organized in every town and city, and all that human arm can do is being done to alleviate suffering. When the appeal for aid reached Indianapolis, Governor Porter and ex-Senator McDonald went together to the legislature, then in session, and in a few words stated the case, and in a few minutes the rules were unanimously suspended and bills passed both houses appropriating \$100,000 for relief, a thing which the legislature had no right to do under the constitution. But every man felt that there are necessities which hold laws and constitutions in abeyance until the necessity is past. But what is all this ruin compared with the ruin which the stream of drunkenness is causing, swollen to flood-tide, abandoning at this very moment all its old channels and invading the homes of wealth and poverty alike, sparing neither the children of the church nor the children of those who are drunkards.

It is a ruin, too, compared with which the floods of the Ohio are a mere bagatelle. This has destroyed untold millions of property, and driven thousands of families from their homes—the rich and the poor alike. But what the Ohio flood does once in fifty years the liquor traffic does constantly; yet no legislature appropriates relief money, no churches or boards of trade take up collections for the families that are driven from home in much greater destitution than any who have suffered from the flood; for, in addition to the want of material comforts, they suffer the greater agony of humiliation and shame, and moral ruin. No child will ever blush to tell, in after years, that its father was drowned in the great flood of 1883, and that their happy home on the beautiful river was destroyed by the waters, and that for weeks those who survived were dependent upon charity, yet there are thousands upon thousands who, from shame, never refer to the death of

their father, he died of delirium tremens; they never tell how their happy home passed from their possession, it went for liquor; they never tell how they struggled in want, whisky was the cause of it all; and disgrace and shame follow them through life.

THE CHANGE OF SOCIAL CUSTOMS.

In this review of the battle field of these seventy-six years, the first thing which attracts our attention is the great change which has come over the social habits of the people. The beginning of this dates about the year 1832. It has been chiefly the work of the last fifty years. We have already referred to the several steps. Fifty years ago social drinking was common, to-day there is but little of it. The sideboard of the rich is not decorated with cut-glass decanters, and the cupboard of the poor does not contain the jug or big-bellied bottle of fifty years ago, and the merchant's counting-room has no barrel on tap for the gratuitous use of customers. Fifty years ago members of churches drank as others drank, and preachers drank also, and drunken lawyers and drunken doctors and drunken school teachers abounded, and drunken preachers were not wholly wanting. Fifty years ago good men engaged in the traffic. But all this is changed. Here we pause, thank God, and take courage. But another view of the situation is quite the reverse of this. No man who is old enough to remember the character and influence of the tippling houses of fifty years ago, including the taverns, which constituted the chief portion of them, and who is at all familiar with the tippling houses of to-day, will hesitate to say that their influence now is ten times as mischievous as it was then. As good men abandoned the business in obedience to the demands of the growing temperance sentiment, a viler class has taken their place. It was not law, but moral suasion that drove those from the business, and a class of men upon whom no moral forces can operate now conduct the dram-shops of the State. These are to-day the haunts of vice and nurseries of crime and dissipation to a degree wholly unknown in the days when men of good moral character were alone licensed. Keeping pace with the downward tendency of the traffic it will be seen that the word "moral" was wholly

omitted in the law of 1859. The man who sold under that law had to be only a man of "good character," while the law of 1875 does not even require that. Nothing at all is said about proving character.

The tavern keepers of fifty to seventy-five years ago were dealers in intoxicants as they were in coffee. Liquors were considered indispensable at home and especially indispensable to travelers. Not the better moral character alone of the tavern keepers insured more careful sales, but the absolute necessity of preserving order where transient guests were, made them places of comparative quiet. None of the neighboring sots found a refuge in any tavern that claimed respectability. The drinking was all done in the public bar-room, from a little grated bar in the corner, and this room was the sitting-room for all. No screens or frosted windows shut off the public from every transaction, and these taverns, by the wholesome regulations of the laws of that period, were comparatively harmless. Entertaining travelers was the principal business, the selling of liquor to the neighbors altogether secondary. It remained for a later period for liquor selling to become a separate calling—the keeping of an establishment for that purpose alone; and this victory may be marked as one of the first substantial victories gained by the traffic in its tussle with society.

Surveying the field further, we notice the vast superiority of the law of 1807 over the law of 1875. The honest men who wrote that law honestly intended to restrain the traffic within the narrowest bounds consistent with the convictions of the age as to the usefulness of whisky as a beverage. They fined the unlicensed vendor by the day, not by the drink. The keeping of a tippling house, without license, was the offense, not the selling of drams to men who will swear falsely to screen the guilty seller. Then, look at the penalties! A fine of twelve dollars was more to the average tavern keeper in 1807 than a fine of a hundred would be to the average liquor seller to-day. No harm can come in comparing this with that. Let us look facts squarely in the face in surveying the field. If the liquor sellers hold the fort, let us know it and confess it, that we may the better determine whether we shall surren-

der or renew the fight. They do hold the fort so far as law and its administration go.

THE TRAFFIC A UNIT.

The next thing that will arrest our attention is that the traffic is a unit in the defense of its business, and that it is consistent and in earnest. In its movements it knows only its friends. There is not a liquor-seller in the State that cares a copper for any political party that does not do his bidding. In this connection we notice that it has always found in the Democratic party a fast and reliable friend. Mr. English thoroughly understood the situation when, in his speech to the Democratic convention, August, 1882, he said: "They (the liquor-sellers) have come to stay if we treat them well, and that is what we intend to do." The only mistake was that it was the mountain, this time, that went to Mohammed; the Democratic party surrendered all to the Liquor League except the name, and they twain have become one flesh. These facts are indisputable.

There is another indisputable fact—yes, two of them: The first is that the temperance men are not consistent, and are not in earnest; they are not a unit, and possibly never will be. They belong to their respective political parties. They belong in the sense that they are owned by their respective parties. The leaders of the Democratic party do not ask the temperance men of the party what their wish is on the temperance question, for they can rely upon a solid vote at all times. They are anxious only to treat the liquor-sellers well; temperance men will stay, though kicked like dogs; while the liquor interest will stay only on condition of having what they want, and they have never been denied that by that party. And the same is true of the Republican temperance men. The Republican party never espouses their cause. They pass mild temperance resolutions sometimes, but they never defend them afterwards, and then, because they are badly defeated by their half-way policy, many of their leaders proclaim that they will never say temperance again, and they proceed to waste their time and strength in begging pardon of the liquor-sellers and in courting their support, though

everybody else knows that it is gone and gone forever; yet in a spirit of slavish submission, Republican temperance men emulate their Democratic brethren and vote the ticket year after year. The second fact is that the temperance men have no friends. No party courts them, because no party needs to. It is the existence of these facts which has kept the traffic on top these seventy-six years, except the five months of 1855, which was obtained, as has been seen, by cutting loose from party by the temperance people. Is there no lesson in all this?

ARROGANCE OF THE TRAFFIC.

Pausing a moment longer to survey the field, we can not fail to notice the arrogance of the traffic to-day. Conscious of its strength in the possession of millions of money, and the absolute ownership of the Democratic party, and with the Republican party so cowed that it dare not utter one manly, earnest protest against it, is it any wonder that it is arrogant? There are more preachers in Indiana than liquor sellers, exclusive of druggists, all of whom, with very few exceptions, write and talk and preach against the traffic; yet they have always voted their party ticket since 1854, knowing that the liquor interest either controlled the party's action or tied the party's hands, so that, to-day, this mere handful of men control our legislature, elect our judges, farm out our benevolent institutions and wrest from our cities the control of their police. It not only pays next to no taxes at all, but it binds burdens upon the State that would not be endured an hour if made in behalf of schools or churches. A careful inspection of the tax duplicate of Marion county in 1882, showed that the entire 358 licensed saloon keepers of Indianapolis pay taxes on \$20,000 less of personal property than the Indianapolis rolling mill alone, not to mention the hundreds of other industries which contribute to the wealth and happiness of the people; and the carefully compiled statistics gathered by the State Bureau of Statistics for 1882 show that the cost of prosecuting crime, before the courts of Marion county alone, for the year ending August 31, 1882, was \$73,340.16 above the amount collected for fines during the same period from 3,119 convictions; and it is now no secret that the office of State

statistician was reorganized by the liquor league represented in the legislature, and the secretary of the League given charge of the office, chiefly because it had turned its attention to the cost of the traffic. The traffic was quite content to investigate the relation of dogs to sheep culture, but the Bureau of Statistics must not inquire into the relation of the traffic to crime and expenses. The traffic is more than arrogant—it is exacting. It demands and its servants obey.

LAWS COMPARED.

I have shown that the law of 1875 is more favorable to the traffic than the law of 1807. Why should it not be? The liquor sellers themselves wrote every word of it. Not a temperance man or a temperance sentiment was consulted. The few insignificant concessions which seem to be made to the cause of humanity are so hampered by conditions, expressed or implied, as to be worthless. What is there in forbidding a sale on Sunday, or at midnight, or to minors, or drunkards? Who can afford to keep watch and detect the offenders? To prove a sale by the men or boys who buy is next to impossible, so that practically there is no restriction. Then look at the proposed penalties and compare them with the penalties for other crimes. For selling to minors, or drunkards, or on Sunday, the fine, in the law of 1875, was from ten to fifty dollars. It was increased in 1881 to from twenty to one hundred. But what is that? To sell skimmed milk or milk from which the strippings have been saved, the lowest fine is fifty dollars, and it may be as high as five hundred. To butcher a lame animal and sell the meat, the lowest fine is fifty dollars and it may be five hundred and imprisonment for six months. To kill a calf that is not full twenty-eight days old, and sell the meat, is so damaging to society that the lowest fine is ten dollars, and it may be five hundred and six months' imprisonment. To deface a tombstone, the lowest fine is fifty dollars, and it may be five hundred and six months' imprisonment, so much more sacred is the dust than the living man. For carrying off ten cents worth of apples from an orchard the offender may be fined one hundred dollars and imprisoned six months. The pleasure of a few city bloods, who desire the sport of shooting quails and catching fish, is so important that

whoever catches his own quails, on his own farm, at any time of the year, in any trap or net, is fined five dollars for every quail so caught; or for catching fish any other way than by a hook he shall be fined not less than five dollars for every fish so caught, and it may be twenty-five dollars.

And these examples might be multiplied indefinitely. They are introduced, not to complain of them, but to show that in reference to the protection of quails and fish and apples and young calves the State is in earnest, but when we ask it to protect our children a most insignificant fine is imposed. Besides, the law of evidence as to apples and fish and quails and calves is such that circumstantial evidence is conclusive; but we may see a boy go into a saloon sober and come out drunk, but unless we can prove an actual sale by the proprietor himself, or by his knowledge, there can be no conviction, for the boy himself will never testify against the man who sold the liquor.

Perhaps no better illustration bearing upon this point can be given than a short chapter of history connected with the legislature of 1883. As stated, the use of a seine or dip-net in catching fish is forbidden by the law of Indiana under a penalty of ten to two hundred dollars, but experience has shown that farmers and others who have not time or inclination to catch fish in the lawful manner, go of nights, or seek some out-of-the-way place and use seines and nets. It is next to impossible to detect them. To meet this method of evasion, a bill was introduced into the House, making the possession of a net or seine evidence of guilt, which passed the House almost without opposition, but failed in the Senate for want of time. And that is right, if the State means to protect her fish. It is in keeping with making the possession of machinery for counterfeiting, or implements for gambling, evidence of guilt. In the line of the same class of legislation there was introduced into the House a proposition to make the opening of a saloon on Sunday, or after 11 o'clock, or on election days, or the presence of boys or drunken men in a saloon, evidence of guilt, but that was not allowed to even come to a vote. The liquor league, which had control of the legislature, will tolerate no legislation of that kind. The keep-

ing of a dip-net is evidence enough of catching fish by net, but the keeping open of a saloon on Sunday can not be taken as evidence of selling whisky on Sunday. The overt act must be proven by a third party, for it never can be proven by the seller or the buyer. And yet a class of hypocrites say, enforce the law you have before asking for more law. It was never made to be enforced.

FURTHER LESSONS.

A survey of the field, historically, reveals some further lessons that ought to be valuable. Coming down the years we discover that only once have the temperance people demanded what was right. If any phase of the liquor traffic has any right to exist at all we have no right to hamper it with conditions different from any other legitimate business. If wrong, it should be prohibited, as all other crimes against society are forbidden. When, therefore, we inscribed prohibition on our banner in 1854, we had the inspiration of demanding what is right. But the prohibition of that law, as I have already said, was not the ideal prohibition of some fanatical temperance men, nor in any sense the commercial and social bugbear which the friends of free whisky are forever thrusting into the faces of a class of timorous creatures who are eternally suspecting some criminal intent upon their personal rights. It was, in its best sense, a well-regulated license law, and nothing more. It made ample provision for the manufacture and sale of intoxicants for every possible purpose except its use as a beverage in places of public resort. The keeping of liquors and the using of them, as a beverage even, was amply protected, except at tippling houses, though, on account of the inherent wickedness of the traffic in its persistent evasion of all ordinary restraints, the procuring of liquor for other purposes was necessarily difficult, but it was not impossible; while there was not the least hindrances to its use anywhere or by anybody, except as stated. It was in no sense a sumptuary law. It laid no restrictions upon the cost of living, and did not assume to say what men should or should not eat or drink, but, reduced to its true inwardness, and stripped of all the unavoidable machinery, it

aimed only at saying *where* men should not drink—they should not drink at those schools of vice commonly called tippling houses. It was no less a good local option law in the proper meaning of that phrase. While its machinery was such as to wholly suppress tippling houses and exhibitions of public drunkenness in all localities where the majority desired their suppression, yet where the moral, or social, or political majority was against its enforcement it would leave the traffic unmolested, just as is the case with all prohibitory laws. The law which prohibits gambling, and stealing, and houses of ill-fame, are inoperative when the majority of any locality want to have them so.

The Maine law itself, for these thirty years, and the Kansas law are but well regulated license laws and local option laws as well. In each State such men are licensed to sell as, in the judgment of the people, are proper, and under such restrictions as the people have chosen to throw around the dangerous business; and these so-called prohibitory laws are enforced only in localities that demand their enforcement by a preponderance of public sentiment against the traffic, and, as a matter of fact, both in Maine and Kansas there are localities—a very few, however—that by the majorities in favor of free whisky, the laws are rendered nugatory. On the other hand, all so-called license laws are prohibitory to all who are not licensed. So that, after all, the only difference between that class of legislation which is called prohibitory and that which is called license consists wholly in the purpose of the law. Prohibitory laws mean that where a majority demand that the traffic shall be put under rigid surveillance it may be, while the so-called license laws are of that class which puts the community under bonds, and the traffic on top. Thus all so-called license laws are prohibitory, and all so-called prohibitory laws are only license laws, the difference being in the intent and extent, not in the principle; and differing also in the machinery by which the law is enforced. There is therefore some ground for the saying which certain smart Alecks spurt out as exhibitions of profound wisdom, "Prohibition don't prohibit." It was never intended to, in the sense that the traffic and use should not be tolerated at all.

So that this, the cheapest and most common objection to a prohibitory law, at once shows the insincerity of the traffic and its friends, and truthfully, though unwittingly, states the real character of the law, while intending to bear false witness against it. In no place is more liquor sold under a prohibitory law than under the license system, as the hostility of the traffic abundantly proves, yet, by averring that this is the case, the enemies of prohibition bear testimony to the fact that, outside of tippling houses, it is not unreasonably difficult to obtain them for any and all purposes. And the sooner that prohibitionists make it plain to the common mind that this is the extent of their purpose and the extent of the practical workings of all prohibitory laws, the better for them; for there are very few who dare advocate the protection or tolerance of the nurseries of vice known as tippling houses.

But that class of laws technically called prohibitory does regulate the traffic so as to reduce its mischiefs to its minimum, so far as law can restrain the evil propensities of man. The details of these laws may differ in the several States; and at best any law on this subject must be tentative for many years. No human law maker ever did at once, or even after many trials, enact a finality. It may take another period of seventy-six years to reach even approximate perfection. But at this stage of the tussle, to ingloriously surrender and to abandon the field to such a crime as the liquor traffic is against every interest of society, is to write our government a most stupendous failure, and to assume that for continuous generations the Christian people of America, bearing their share of the responsibilities of sovereignty, will acquiesce in laws which license and protect and make honorable a class of men who invade our Sunday-schools and churches and our more sacred family circles, and snatch hence the most promising and lovely for their victims, is to write our holy religion worse even than a cunningly devised fable. It is an imposture that deserves to be banished from the earth. The time has come when Christian men will demand the protection of law in behalf of their children, and will no longer tolerate that relic of barbarism which presumes to license men to murder them, nor en-

dures politicians who make light of their convictions for the sake of securing the votes of liquor sellers.

A LESSON FROM THE PAST.

In surveying the field of this unequal tussle, if the thoughtful temperance man will pause a moment at those five months of absolute supremacy, those months of joy and peace, and comfort and hope, and ask how it happened, he will discover that then only the temperance men meant business. They then cut loose from all political entanglements and adopted substantially the policy of the liquor league—to vote for no man who was not in favor of prohibition and to help only such political party as would help them. They did not propose to form a separate political party except as a last resort.

If any man is so long-suffering as to allege that after the continued failure of twenty-seven years it is yet wise to relegate this temperance question to the tender mercies of politicians who are still hobnobbing with the traffic, he should be able to stand up and tell why. To tolerate this method of dealing with this question another day is to open the door for another twenty-seven years, renewable forever, and to grant a perpetual lease to the traffic for all time to come.

The survey of the field answers another question. In all these years we have had but five months of rest and peace and hope, and those were the months of prohibition. It will be seen that we have tried high license, and low license, and no license at all, and that nothing but prohibition has met the case. In the language of the venerable Dr. Brown, the possibilities of license have been exhausted, so that the temperance man who talks of any possible form of license or local option which is not prohibitory in its character, talks wildly if he talks honestly. And this survey answers a still more important question: Can a prohibitory law be enforced? Can it? Why, it enforces itself. Besides the extracts elsewhere published from the papers of that day, of every shade of political belief, there remain tens of thousands who can testify that there was no trouble in enforcing the law of 1855, in town or country, until it became certain by his action in

the Herman case, that Judge Perkins would discharge all who might be imprisoned for its violation. The liquor-seller, therefore, who shakes his fist in our faces and says that we can not enforce a prohibitory law, not only proclaims himself an outlaw, but a falsifier of history. Ah, it is because we can enforce such a law, and can enforce no other, that he pledges his life and his fortune and his sacred honor to the party that will keep such a law from the statute books. But what of other men who say as much? Shall we call them cowards? No, for they are not that exactly. In truth, it must take no little backbone for a man of average intelligence to assume that the people of Indiana are so completely at the mercy of the traffic that when once they resolve to suppress it they can not. No, they are not cowards, exactly. Some of them are temperance men, after a fashion, and they will always remind thinking men of a class of patriots who hung on the edge of the army—the outer edge, always—and said: "Yes, it would be a good thing if you could do it, but you never can subdue the South—no, never." They were not cowards exactly, but they never went to the front. In most cases their wishes were father to the thought, and in many cases they joined hands, secretly, with the enemy to make their predictions come true, just as these can't-ers do. They love their drams, and therefore oppose prohibition.

A further survey of the field discloses most active preparations for something that shall be more than a tussle. If there is any reliance to be placed in the notes of preparation, the campaign of 1854 is soon to be renewed on a grander scale than it was then. Temperance men will ask no favors of any political party. They propose to go straight forward. If the Democratic party chooses to favor prohibition affirmatively and earnestly, then the Democratic temperance men will remain in their political home and temperance Republicans will flock to their help, unless the Republican party becomes equally aggressive and positive in its policy. If the Republican party shall see enough in the costs, and crimes, and sorrows of the traffic to openly avow its uncompromising hostility to it, then temperance Republicans will remain in their own political camp and help the party that helps them, and tem-

perance Democrats will flock to the standard of those who favor their cause. But if one party favors the traffic, and the other is afraid to oppose it, we shall see such an organization as has not been in Indiana since the January meeting of 1854, heretofore described, and prohibition in the near future will be the result, and it will come to stay.

But in saying this I must not be understood to intimate that it is to be one decisive battle and then the end, as is the too common notion of many, and especially of those who are most intent on a constitutional amendment. The traffic which has held the fort for more than three-quarters of a century in Indiana, except five short months, and which has been the subject of repressive legislation for more than three centuries, will not quit the field at once. No constitutional amendment or prohibitory law will discourage it or suddenly overthrow it. Every victory in this line on the side of morality and economy and human life will be but a step to be succeeded by an advance movement or by an inglorious and cowardly retreat. They are to be only chapters in the eternal conflict between right and wrong, and each generation is to bequeath to the generations following the unfinished work of holding vice at bay if it may not be subdued. Failing to act upon this unmistakable truth has been the fatal error of temperance people all these years, and he has been accounted an enemy who did not join in the clamor of "On to Richmond!" When Governor Morton telegraphed to General Scott, the Monday after the firing upon Fort Sumter, that he had forty thousand men ready to march against the rebels, and asked what to do with them, the old chief curtly answered: "Put them in camp and drill them."

We have been drilling our men, and no less our women, these twenty-seven years. An army has grown up in our Sunday-schools, and no less in our free schools, and those who are now organizing against the entrenched traffic will not prove to be a rabble that will be dispersed by any Bull Run disaster. They begin to comprehend the magnitude as well as the importance of the conflict. It may prove, therefore, that the splendid victory which the traffic imagines it gained in the legislature of 1883 in defeating the amendment, and in

turning out the offensive Chief of Statistics, who showed up the enormity of their offense, and in putting the secretary of the liquor league in the chief clerkship of that bureau, not to mention several other things done or left undone by their legislature, was a Bull Run in more than one sense. It was not until after that battle that the Union people comprehended the magnitude of the war and made war in earnest, and called out men for three years, at least, and declared slavery abolished, and fought for a purpose.

The signs of the early coming of prohibition are all the more cheering because temperance men, without losing sight of constitutional amendments, have determined to get out of the present constitution all the prohibition there is in it, and it is the opinion of many of the oldest and most earnest prohibitionists of the State, founded on the court decisions herewith published, that laws practically as stringent as the law of Kansas can be passed under it. But they can be obtained only by a steady, consistent and persistent purpose to elect only such men to the legislature as desire to attain this end. Such a legislature has never been elected since the celebrated campaign of 1854; hence the possibilities of our present constitution have never been exhausted. Let us exhaust these and then demand whatever further is necessary. The traffic must and shall be prohibited.

L A W S .

1807. The act of 1807 provides, that for preventing disorders and the mischiefs that may happen by multiplicity of public houses of entertainment, no person or persons shall, in future, have or keep any public inn or tavern, ale house or dram shop, or public house of entertainment, in any county, town or place within this territory, unless such person or persons shall first obtain permission or license from the Court of Common Pleas, which shall continue for one year and no longer, under the penalty of one dollar per day for every day on which the party offending shall keep such public inn, tavern, ale house, dram shop or public house of entertainment, to be recovered, with costs, before any justice of the peace, in an action *qui tam*, two-thirds whereof shall go to the use of the poor of the county where the offense may be committed, and the other third to the prosecutor suing for the same, to effect. The man so licensed must keep an orderly house and allow no drunkenness or unlawful games, under a penalty of five dollars for the first offense, and a suppression of the place by the court on the second offense and a revocation of license ; and after such suppression of license he shall be fined a dollar a day if he follow the business without a new license, and all tavern keepers shall furnish good entertainment for man and horse, under penalty of five dollars, to be recovered as aforesaid.

The court shall demand such a tax of not exceeding twelve dollars as may be deemed reasonable, taking into consideration the stand, which tax is to go into the county treasury for general purposes, and a fee of one dollar for the use of the

clerk. The court shall require a bond of not exceeding three hundred dollars that the applicant shall be at all times of good behavior; and shall observe the laws relating to tavern keepers; and no person, unless qualified by law, shall presume, under any color or pretense, to sell, barter with or deliver any wine, rum, brandy or other spirits or strong water, beer, cider, or any mixed strong liquors, to be used on or within his house, yard, shed, or to be with his or her knowledge, privity or consent used or drank in any shelter, place or woods near or adjacent to them by companies of servants, slaves or others, nor to retail or sell to any person or persons any rum, brandy or other spirits or strong water, by less quantity or measure than one quart, nor any wine by a less quantity or measure than one quart, nor any beer, ale or cider by any quantity less than two gallons, the same liquors being respectively delivered to one person and at one time, without any collusion or fraud, contrary to the true intent and meaning of this law, under penalty of twelve dollars, for the use of the county. The person so licensed shall not receive, harbor, entertain or trust any minor or servant after having been warned to the contrary by parent, master or guardian, under penalty of three dollars for the first and second offense and forfeit any debt contracted by such minor or servant for liquor or entertainment. For the third offense he shall forfeit his license and be fined twelve dollars, and be forever incapable of keeping a public house or inn within the territory. And no person shall, by any means, presume to furnish, supply or sell to any bond-servant or slave, any rum, brandy, spirits or any strong liquors or strong water, mixed or unmixed, either within or without doors, without special license, obtained under the hand of the master or mistress, under penalty of three dollars for the first offense and for every succeeding offense four dollars, and the offender, in all cases, shall be committed to jail until all fines are paid; and all fines and forfeitures recovered, not otherwise ordered, shall go, one moiety to the father, mother, guardian, master or mistress of the minor or servant, the other moiety to the sheriff, as treasurer for the county. The Court of Common Pleas, at the time of granting license, shall make out a list of

rates which the tavern keeper shall set up in his most public room, and any person who shall presume to sell at any higher rates, or without having first set up his rates, shall forfeit twenty dollars for the use of the person suing for the same. Acts of 1807, page 89.

—The law of 1807 further provides, that the Governor shall issue a proclamation forbidding the sale or disposition of any ardent spirits or other intoxicating liquors to any Indian, by any person, for any purpose, or under any pretense, within thirty miles of any council, treaty or conference, and that violators shall be fined not less than fifty nor more than five hundred dollars, and in case of inability to pay the fine shall be imprisoned not less than three nor more than six months, and that if any trader or other person whosoever, residing in, coming into or passing through said territory or any part thereof, shall presume to furnish, vend, sell or give, or shall procure to be furnished, vended, sold or given upon any account whatever, to any Indian or Indians being within the territory or waters adjoining thereto, or bounding the same, any rum, brandy, whisky or other intoxicating liquor or drink, he, she or they shall forfeit for every such offense, any sum not exceeding one hundred nor less than five dollars, to take effect when the governor of the territory shall be officially notified that the States of Ohio and Kentucky and the territories of Louisiana and Michigan shall have passed a similar law. Acts of 1807, page 387.

1813. By the act of 1813 it was provided that the clerk should furnish a list of taverns to each grand jury, and that he might grant a permit in vacation until the next session of the court, which should have power to grant a license for one year from the date of the permit, for any sum not exceeding twelve dollars. For this permit the tavern keeper should pay one dollar and give bond for good behavior, and the act of 1807 was so amended that beer, ale and cider may be sold by the quart.

1817. The Acts of 1817, page 166, provides, if any tavern keeper or other person shall sell or barter any spirituous

liquors on the first day of the week, commonly called Sunday (except to travelers), he shall be fined in any sum not exceeding three dollars.

1818. The act of 1818 provides that any person who shall barter or sell by retail any spirituous or strong liquors, to be drank in his or her house, outhouse, yard or garden, or shall sell the aforesaid liquors by a less quantity than a quart, without license, shall be fined for every offense three dollars, and that the Board of County Commissioners are authorized to grant license to any person who shall apply at any of their meetings, as retailers of spirituous or strong liquors, provided the applicant produce a certificate of twelve respectable householders, that such person is of good moral character and that it would be for the benefit and convenience of travelers for such person to be licensed as aforesaid. The applicant shall give bond in the sum of five hundred dollars not to permit gambling, rioting or disorderly conduct about his premises, or suffer unlawful assemblies, or retail on Sunday, except to travelers, or do or suffer to be done any unlawful thing about his house. If the condition is forfeited the Circuit Court shall suppress the license and the county treasurer shall sue on the bond. It is further provided that the applicant shall first pay the amount required by law, and the license shall continue only for one year. In case of no complaint of disorderly conduct, the certificate of good moral character need not be reproduced on subsequent license, and provide that any one may sell by the quart or gallon when the liquor is not to be drank in or about the premises of the seller. He shall not sell to minors, apprentices or servants, knowing, or having reason to believe he is such, without consent, under penalty of three dollars. And no debt contracted for liquor, above five dollars, shall be collectible by law, except of travelers. He shall not sell to any person in a state of intoxication, believing, or having reason to believe that he or she is in a state of intoxication, under penalty of three dollars. All fines under this act to go to county seminaries. It is provided further, that the commissioners shall yearly fix tavern rates, and the tavern keeper shall keep the

same set up in the most public room. For selling at a higher rate, a fine of not exceeding three dollars shall be collected. The clerk's fees for a copy of the rates shall be twenty-five cents. Acts 1818, page 296.

—Tavern keepers, selling on Sunday (except to travelers), shall be fined in any sum not exceeding three dollars. Acts 1818, page 314.

1820. The act of 1820 provides that tavern keepers, failing to set up for one whole day, the bill of prices, and who shall charge more than allowed by law, shall forfeit not less than five dollars nor more than fifty, for the benefit of the county seminary, and that any person violating the first section of the act of 1818 shall be fined not more than twenty dollars nor less than two.

1824. The revised code of 1824, approved January 30, provided that any person applying for license shall produce the certificate of twelve respectable freeholders, that the applicant is of good moral character, and that it would be for the benefit and convenience of travelers for said person to be licensed, and he shall give a bond in five hundred dollars that he will not permit any gambling, rioting or disorderly conduct in his or her house, but will conform to the laws of the state, restraining gambling and disorderly conduct about taverns or public houses; will not suffer any unlawful assembly or sell spirituous liquors on the Sabbath day, commonly called Sunday, except to travelers, and to constantly keep on hand the bedding and stabling and other accommodations necessary for the comfort and convenience of travelers, and the license shall not be transferable. He shall pay to the county treasurer the amount required by law, and the license shall continue not longer than one year. Where there has been no complaint a new license may be granted without the above certificate, and a permit may be granted in vacation, on complying with the above conditions, which shall not run beyond the next meeting of the board; on failing to comply with the law he may be fined in any sum not exceeding fifty dollars; he shall not sell to minors, apprentices or servants,

without consent; shall not have the benefit of law to collect debts made for liquor above five dollars except of travelers; nor sell, knowingly, to an intoxicated person. The commissioners shall fix tavern rates, for a copy of which the tavern keeper shall pay the clerk twenty-five cents, and he must set it up in the most public room in the house. The court shall give this act at every term in charge to the grand jury. Acts 1824, 406.

—By act approved January 30, 1824, it was provided that the commissioners should make inquiry as to the place of residence of the applicant, and the profits of the business and grade the fee accordingly, which shall be not less than five nor more than twenty-five dollars. Acts 1824, 339.

—By act approved January 20, 1824, it was provided that if a tavern keeper permit gambling about his premises he should be fined not less than fifty nor more than two hundred dollars. Also that for selling without license a fine of not less than two nor more than twenty dollars, and for failing to keep posted in his most public room his rates for liquors, meals, stabling, etc., a fine of not less than five nor more than fifty dollars for every whole day of such neglect, and for selling on Sunday, except to travelers, not exceeding three dollars. Act 1824, 146.

1825. The act of 1825 amends the act of 1824 so as to require the applicant for license to produce the certificate of at least twenty-four respectable freeholders, who are inhabitants of the town or village, certifying that the person or persons so applying are of a good moral character; that it would be for the benefit of travelers and conducive to the public good, if such tavern should be opened; and that they believe that it is the *bona fide* intention of such applicant to keep a tavern for the accommodation of travelers: *Provided*, That if the town or village wherein the tavern is proposed to be kept, does not contain twenty-four freeholders who are inhabitants, that the number may be completed by freeholders in the immediate vicinity; and that before any person shall be entitled to a license to keep a tavern he, she, or they shall

prove to the satisfaction of the board of justices of the proper county that such applicant is the *bona fide* owner or tenant for one or more years of a good house with at least three apartments, and a stable convenient to said house, with at least four good stalls, and further that such applicant is the owner of at least two beds and bedding over and above what is used by his or her family, and all other furniture necessary and proper for a tavern in such town and village; and that before the board of justices shall grant a license to keep a tavern they shall require the applicant to enter into a bond with good freehold security, conditioned, in addition to the requisitions of the first section of the act of 1824, that the applicant shall at all times keep in the house wherein the tavern is kept at least one spare room, and two beds and bedding, besides that which is used by the family, together with the necessary furniture, and good stabling for at least four horses, and that so much of the act of 1824 as empowers the board of justices to assess rates and prices to govern tavern keepers be repealed; and each tavern keeper shall keep a list of his own rates posted in his most public room. Acts 1825, 99.

1828. By the law of 1828 the courts doing county business are authorized to license as retailers of spirituous or strong liquors, any person who may apply therefor, for a term not less than one year, without requiring said person to be obligated to keep on hand the bedding and stabling, with other accommodations necessary for the comfort and convenience of travelers. It further requires the applicant to produce the certificate of at least twelve respectable freeholders of the town or township, that he, she, or they are of good moral character, and they shall give bond as required by the act of 1824, except as to keeping bedding, etc.: *Provided*, That no license shall be granted within any town or township where a majority of the freeholders remonstrate against the granting of the same.

The person so licensed shall pay to the county treasurer the full amount that may be fixed by the court doing county business, before obtaining the license, which shall not be less than the lowest tavern license in the county: *Provided*,

That merchants licensed to sell goods may sell foreign liquors by the small, for the use of the sick, and no retailer, who shall sell on credit to a greater amount than one dollar, shall have the benefit of the laws of the state for the collection of the same. Acts 1823, 79.

1831. By act approved Feb. 10, 1831, it was provided that in addition to the license obtained of the county commissioners, before any person may retail spirituous liquors, foreign or domestic, or keep what is commonly called a tippling house in an incorporated town, he shall obtain a license from the constituted authorities of the town, by paying into the town treasury a sum not exceeding that paid to the county. The license fee thus obtained shall be for the schools of the town. Acts 1831, 527.

—By act approved Feb. 10, 1831, it was made unlawful to sell or barter any spirituous liquor, without license, in less quantity than a quart, under a fine of not less than two nor more than twenty dollars, and that for neglecting to keep up a list of prices of fare in taverns, including prices of liquor, in the most public room, for one whole day, there shall be a fine of not less than five nor more than fifty dollars, and that for suffering games to be played in tavern, ordinary or grocery, or in any outhouse appendant thereto, he shall be fined not less than fifty nor more than two hundred dollars, and forfeit his license and not be relicensed for one year. Acts 1831, 192, 193.

—By the charter of the town of Madison, approved Feb. 4 1831, it was provided that no person should sell in less quantity than a quart or keep a tippling house without a town license, for which he should pay not less than five nor more than fifty dollars, under a penalty of not less than ten nor more than one hundred dollars, for the use of the county seminary. Local Laws 1831, 42.

1832. SECTION 1. The act of 1832 provides that the court doing county business shall license, as retailers of spirituous or strong liquors, every person who may apply therefor; but said court shall not grant any license or permit unless such

person applying therefor (if a tavern keeper) shall produce the certificate of twenty-four respectable freeholders, who are inhabitants of the town or township, certifying that the person so applying is of good moral character; that it would be for the benefit and convenience of travelers, and conducive to the public good, if such tavern should be opened; and that they believe it is the *bona fide* intention of such applicant to keep a tavern for the accommodation of travelers: *Provided*, That if the town or township where the tavern so proposed is to be kept does not contain twenty-four freeholders who are inhabitants, that number may be completed by freeholders in the immediate vicinity.

SEC. 2. Requires the applicant to prove that he owns or rents a good house of at least three rooms, a stable with four good stalls, two beds and bedding more than are used by the family, and to give bond in the sum of five hundred dollars that he will not permit any gambling, rioting or disorderly conduct in his house, but will conform to the laws of the state restraining gambling and disorderly conduct about taverns or public houses; that he will not suffer any unlawful assemblies or sell liquors on Sundays, except to travelers; that he will keep at least one spare room with two beds and bedding, besides that used by the family, and good stabling for four horses. If these conditions are forfeited the court is authorized to suppress the license, and the treasurer shall sue on the bond. The license is not transferable.

SEC. 3. No license shall be obtained until there is paid into the county treasury the amount required by law, and no license shall be for longer than one year. In vacation the clerk may give a permit, on the applicant complying with the above provisions. For failing to comply with the provisions of this act the delinquent shall be fined in any sum not exceeding fifty dollars and have his tavern abated.

SEC. 4. Persons applying may be licensed as grocery keepers, to retail spirituous or strong liquors and foreign and domestic groceries, for a term not less than one year, without being required to keep beds, etc., as for a tavern.

SEC. 5. The same certificate of character and bond for good behavior is required as of tavern keepers, but no license shall

be granted where a majority of freeholders of the town or township remonstrate.

SEC. 6. The amount fixed for said license shall be at such rate as the commissioners shall think reasonable, not less than ten nor more than twenty-five dollars. Merchants licensed to sell goods may sell foreign liquors by the small for the use of the sick.

SEC. 7. No debt created for liquor above one dollar shall be collectible at law.

SEC. 8. Shall not sell to minors, apprentices or servants under the age of eighteen, without consent of parents or master, nor knowingly sell to a person in a state of intoxication. For selling to one in a state of intoxication a fine of not less than two nor more than ten dollars.

SEC. 9. Each tavern keeper shall keep in one of his most public rooms, in plain view of his guests, a complete list of his rates for food, lodging, liquor and stabling, under a penalty of not less than five nor more than fifty dollars.

SEC. 10. Makes it the duty of the circuit court, at its several terms, to give this act in charge to the grand jury. Acts 1832, 259.

—By act approved Feb. 3, 1832, incorporating the town of New Albany, it was made unlawful to sell within the town, in less quantities than a quart, or keep a tipling house without a license from the corporation also, at a fee of not less than three nor more than ten dollars, under a penalty of not less than five nor more than fifty dollars, for the benefit of the county seminary. Acts 1832, 141.

1834. By act approved Jan. 31, 1834, the town of Richmond was authorized to license retailers of spirituous liquors, provided they should charge no more than was exacted for county license, and to punish illegal vendors, not to exceed five dollars for each offense. Acts 1834, 125.

—By act approved Jan. 31, 1834, the town of Centreville was authorized to license at not less than three nor more than fifty dollars, under a penalty of not less than three nor more than twenty dollars. Acts 1834, 140.

—By act approved Feb. 1, 1834, the town of Lafayette was authorized to exact a town license for not less than five nor more than thirty dollars, under a penalty of not less than five nor more than fifty dollars. Acts 1834, 145.

1835. By act approved Feb. 7, 1835, no one was allowed to sell less than a quart in the town of Newport, Wayne county, without also a town license at from five to twenty dollars, under a penalty of from five to fifty dollars. Local Acts 1835, 137.

1836. By act approved Feb. 8, 1836, the town of Michigan City was authorized to prohibit the selling of spirituous liquors or ardent spirits, to be drank on the premises, without a town license. Local Acts 1836, 13.

—By act approved Feb. 1, 1836, the town of Rome was authorized to require a town license for keeping a tippling house, and charge five dollars for it. For selling without such license a fine, not to exceed fifty dollars, might be collected for the benefit of the county seminary. Local Acts 1836, 30.

—By act approved Jan. 27, 1836, the borough of Vincennes was authorized to exact a borough license to keep what is commonly called a tippling house, for not less than five nor more than fifty dollars. For selling without such license a fine from twenty to one hundred dollars for the use of the county seminary, and for the better government, regulation and peace of said borough. Local Acts 1836, 37.

—By act approved Feb. 5, 1836, the town of Indianapolis was authorized to require a town license, in addition to the county license, for keeping a tippling house, charging from five to fifty dollars. For selling without such license a fine of ten to one hundred dollars for the county seminary. Local Acts 1836, 46.

—Same for the town of Dublin, at from three to forty dollars. Penalty for selling without town license from two to twenty dollars. Local Acts 1836, 52.

—Same for the town of Bellville, approved Feb. 8, 1836,

at from three to fifty dollars. Penalty for selling without town license from three to twenty dollars for the town, and from five to fifty dollars for the county seminary. Local Acts 1836, 59.

—Same for town of Milton, approved Feb. 6, 1836. Cost of license, three to fifty dollars. Penalty, three to twenty dollars for the town, and from five to fifty dollars, for the county seminary. Local Acts 1836, 66.

—Same for the town of Vevay, approved Jan. 30, 1836. Cost, fifty cents to five dollars. Penalty, five to twenty dollars for the county seminary. Local Acts 1836, 74.

—Same for the town of New York, approved Feb. 8, 1836. Same terms as for Vevay. Local Acts 1836, 68.

—Same for the town of New Albany, approved Feb. 5, 1836. Cost, five to ten dollars. Penalty, ten to fifty dollars for the benefit of the town. Local Acts 1836, 81.

—Same for the town of Evansville, for a year or less, at such price as the trustees may fix. Penalty, five to one hundred dollars for the county seminary. Local Laws 1836, 88.

1837. By act approved Feb. 6, 1837, for the levying of taxes, it was provided that the Board of Commissioners should levy on each license for retailing spirituous liquors not less than fifteen nor more than one hundred dollars. Acts 1837, 110.

—By act approved Feb. 2, 1837 the town of Bloomfield was authorized to require a town license. Cost, five to twenty-five dollars. Penalty, five to fifty dollars, for the county seminary. Local Acts 1837, 25.

—By act approved Feb. 2, 1837, the town of Knightstown was authorized to require a town license. Cost, three to fifty dollars. Penalty, three to twenty dollars for the town, and from five to fifty dollars, for the county seminary. Local Acts 1837, 45.

—By act approved Feb. 4, 1837, the town of Cleveland, Tippecanoe county, was authorized to require a town license.

Cost, five dollars. Penalty not to exceed fifty dollars for county seminary. Local Acts 1837, 86.

—By act approved Feb. 6, 1837, the town of Shelbyville was authorized to exact a town license. Cost, three to fifty dollars. Penalty, three to twenty dollars, for the benefit of the town, and five to fifty dollars for the county seminary. Local Acts 1837, 87.

—By act approved Feb. 4, 1837, the town of Greensburg was authorized to require a town license, which it was bound to grant. Cost, three to ten dollars. Penalty, three to ten dollars. Local Acts 1837, 100.

—By act approved Feb. 6, 1837, the town of Bethlehem was authorized to require a town license. Cost, not less than five dollars. Penalty, five to twenty dollars for the county seminary. Local Acts 1837, 105.

—By act approved Feb. 6, 1837, the town of Greenfield was authorized to require a town license. Cost, one to ten dollars. Penalty, three to twenty dollars for the town, and five to thirty for the county seminary. Local Laws 1837, 143.

—By act approved Feb. 6, 1837, the city of Lafayette was authorized to charge for license five to two hundred dollars. Penalty, five to fifty dollars for county seminary. Local Acts 1837, 218.

1838. By act approved Feb. 17, 1838, it was provided that any tavern keeper in Vermillion county may enjoy the benefits and privileges of the act of 1832, without keeping the accommodations for travelers, if he otherwise comply with the law, and pay twenty dollars a year. Local Acts 1838, 277.

—By act approved Feb. 14, 1838, the marshal of the borough of Vincennes was authorized to confine in the county jail all persons arrested for drunkenness, between sunset and sunrise, and keep them until they became sober. Local Acts 1838, 391.

—By act approved Feb. 17, 1838, it was made unlawful to keep a tippling house within the bounds of any incorporated town without a town license, for a sum, at the discretion

of the corporation authorities, not less than twenty-five dollars, for the benefit of a permanent school fund for such town. Statutes 1838, 592.

—By act approved Feb. 17, 1838, it was made unlawful for any person, except regularly licensed tavern keepers, to retail liquors within the corporate limits of the town of Jeffersonville, without a town license, under a penalty of ten dollars for every offense. The cost of such license to be from thirty to fifty dollars, according to the class of the coffee house. Local Acts 1838, 129.

—By act approved Feb. 17, 1838, the town of Greensburg was authorized to suppress disorderly houses, groceries and taverns. Local Acts 1838, 130.

—By act approved Feb. 17, 1838, the town of Martinsville was authorized to exact a license for one year or less. Cost, ten to one hundred dollars. Penalty, five to fifty dollars for the town, and ten to one hundred for the county seminary. Local Acts 1838, 82.

—By act approved Feb. 17, 1838, the town of Delphi was authorized to require a town license, except as to tavern keepers. Cost, twenty to two hundred dollars. Penalty, five to fifty dollars for county seminary. Local Laws 1838, 76.

—By act approved Feb. 15, 1838, the town of Rockport was authorized to require a town license. Cost, five dollars. Penalty, any sum not exceeding fifty dollars for the county seminary. Local Laws 1838, 93.

—By act approved Feb. 17, 1838, the city of Logansport was authorized to prohibit tippling houses unless they had license. Local Laws 1838, 116.

—By act approved Feb. 17, 1838, the town of Greensboro was authorized to require a town license. Cost, not less than five dollars nor more than is charged for county license. Penalty, not less than three nor more than twenty dollars for the town, and not less than five nor more than fifty for the county seminary. Local Laws 1838, 88.

—By act approved Feb. 17, 1838, the town of Raysville was authorized to require a town license. Cost, not less than ten nor more than fifty dollars. Penalties, from three to twenty dollars for the town, and from ten to fifty for the county seminary. Local Laws 1838, 104.

—By act approved Feb. 14, 1838, the town of Princeton was authorized to require a town license. Cost, five to five hundred dollars. Penalty, fifty to one hundred dollars for the town, and ten to five hundred for the county seminary. Local Laws 1838, 50.

—By act approved Feb. 17, 1838, the town of Lebanon was authorized to require a town license. Cost, three to fifty dollars. Penalty, three to twenty dollars for the town, and five to fifty for the seminary. Local Laws 1838, 106.

—By act approved Feb. 17, 1838, the town of Terre Haute was authorized to prohibit the sale, etc., without license from the council. Local Laws 1838, 43.

—By act approved Feb. 17, 1838, the town of Indianapolis was authorized to charge one hundred dollars for town license, and the penalty was from fifty to one hundred dollars, for the benefit of the town. Local Laws 1838, 33.

—By act approved Feb. 15, 1838, the town of Franklin was permitted to charge a sum not less than fifty dollars for a license. Upon a petition of two-thirds of the legal voters of the town no license should be granted. Penalty, not less than fifty nor more than one hundred dollars for the town, and not less than five nor more than fifty for the seminary. Local Laws 1838, 98.

—By act approved Feb. 15, 1838, the town of Paoli was authorized to charge for a town licence not to exceed ten per cent. on the capital invested in the business. Local Laws 1838, 127.

—By act approved Feb. 15, 1838, the town of New Boston was authorized to require a town license. Cost, three to fifty dollars. Penalty, three to twenty dollars for the town, and five to fifty for the seminary. Local Laws 1838, 58.

—By act approved Feb. 17, 1838, the town of Laporte was authorized to charge the same for a town license as was required for a county license. Local Laws 1838, 62.

—By act approved Jan. 14, 1838, the town of New Washington was required to grant a town license to all who applied, upon any sum not more than ten dollars that the town board agreed upon. Penalty, two to ten dollars for seminary. Local Acts 1838, 110.

1839. By act approved Feb. 15, 1839, it was provided, in the act for levying taxes, that the commissioners should assess on each license to retail spirituous liquors not less than twenty-five nor more than one hundred dollars. Laws 1839, 21.

—By act approved Feb. 6, 1839, the town of New Castle was required to grant a town license to all who applied. Cost, one to ten dollars. Penalty, two to fifty dollars for the town. Local Laws 1839, 16.

—By act approved Jan. 23, 1839, the city of Jeffersonville was required to act concurrently with the county commissioners and to guard against collision with them relative to the sale of liquors. Local Acts 1839, 37.

—By act approved Feb. 6, 1839, the town of Mt. Vernon was authorized to require a town license. Cost, three to fifty dollars, Penalty, ten to one hundred dollars, for the town. Local Laws 1839, 41.

—By act approved Feb. 11, 1839, the town of Danville was authorized to require a town license. Cost, ten to one hundred dollars. Penalty, five to fifty dollars for the seminary, five to one hundred dollars for the town. Local Laws 1839, 49.

—By act approved Feb. 6, 1839, the town of Columbus was authorized to require a town license. Cost, three to ten dollars. Penalty, five to fifty dollars for seminary. Local Laws 1839, 84.

—By act approved Feb. 14, 1839, the city of New Albany was authorized to grant or refuse a license, and for selling

without such license a fine of ten to fifty dollars for the city. Local Laws 1839, 109.

—By act approved Feb. 15, 1839, the town of Pendleton was authorized to require a town license. Cost, not to exceed twenty-five dollars. Penalty, twenty dollars for the town. Local Laws 1839, 126.

—By act approved Feb. 14, 1839, the city of Madison was granted exclusive jurisdiction in the matter of license within the city and one mile beyond. Local Laws 1839, 150.

—By act approved Feb. 18, 1839, the town of Laporte was authorized to require a town license. Cost, fifty cents to five dollars. Penalty, five to twenty dollars for the town. Local Laws 1839, 171.

—By act approved Feb. 12, 1839, the act of Feb. 17, 1838, relating to Vermillion county, was repealed. Local Laws 1839, 339.

1840. By act approved Feb. 22, 1840, the city of Fort Wayne was authorized to license and regulate the traffic. Local Laws 1840, 25.

—By act approved Feb. 24, 1840, the city of Richmond was empowered to prohibit the retail, without license from the city; and to prohibit the giving or selling to intoxicated persons, child or servant, without the consent of parent or master. Local Laws 1840, 40.

—By act approved Feb. 22, 1840, the town of Jeffersonville was given the exclusive jurisdiction to grant license within its corporation, provided it should not charge more than one hundred dollars per year. Local Laws 1840, 56.

—By act approved Feb. 21, 1840, the town of Rome was made to extend a mile up and down the river, and the corporation was authorized to collect five dollars for every sale made on the landing within this mile, and the county board should not grant a license within one mile of the court house without a petition of a majority of the householders, widows included, within said territory, and no one shall sell to minors

or on Sunday. The tax for such license shall be five dollars. Local Laws 1840, 67.

—By act approved Feb. 15, 1840, the town of Noblesville was authorized to demand a town license. Cost, ten to fifty dollars. Penalty, five to fifty dollars. Local Laws 1840, 76.

1841. By act approved Feb. 12, 1841, the town of Cambridge City was authorized to require a license. Cost, three to fifty dollars. Penalty, three to twenty for the town, and three to fifty for the seminary. Local Laws 1841, 33.

—By act approved Feb. 12, 1841, the town of Wilmington was authorized to require a town license. Cost, ten to fifty dollars. Penalty, five to fifty dollars. Local Laws 1841, 83.

—By act approved Feb. 12, 1841, the town of Mooresville was authorized to levy a specific tax on all retailers of liquors. Local Laws 1841, 97.

—By act approved Feb. 10, 1841, so much of the act of Feb. 22, 1840, as gave Jeffersonville the exclusive right to grant license was modified so as to require the consent of the commissioners. If this could not be obtained the commissioners should grant license as usual; but the city may require an additional license with additional tax. Local Laws 1841, 115.

—By act approved Feb. 10, 1841, it was provided that all tippling houses, or places wherein spirituous or intoxicating liquors are sold without license, and drank about the same, if kept in a disorderly manner, shall be declared to be a common public nuisance, and every person who shall erect, keep, continue or maintain any such nuisance to the annoyance, disturbance or injury of all or any part of the citizens of the State, shall be fined not more than one hundred dollars nor less than twenty-five. Acts 1841, 166.

—By act approved Feb. 12, 1841, it was provided that the board doing county business should cause to be paid into the county treasury for each license to vend or retail spirituous liquors, not less than twenty five nor more than two hundred

dollars. That on the application for license to keep a tavern or grocery, with the privilege to retail spirituous liquors, the commissioners shall inquire as to the place of residence and the profits of the business, and determine the amount accordingly: *Provided*, That a majority of the citizens, householders of any town or township, may remonstrate against such license for any term of time which they may designate, and the board shall be governed by the wishes of the majority thus expressed. Acts 1841, 40-42.

1842. By act approved Jan. 8, 1842, it was provided that the commissioners of Marion county are required to grant license to taverns and groceries on all applications, and that so much of the laws of 1832 and 1841 as authorize remonstrating are repealed, as to Marion county, the applicant complying with the usual provisions of the law as to certificate of character and paying the license fee demanded by the commissioners—not more than is authorized by existing laws. Local Laws 1842, 127.

—By act approved Jan. 31, 1842, no license in the counties of Carroll and Cass shall be granted to keep a grocery unless a majority of the voters of the township are in favor of granting such license, and that at the annual township elections in April each voter may indorse on his ticket "license" or "no license," and if a majority of all the votes given in the township are against license, no license shall be granted, but if a majority of the votes given are in favor of license, license shall be granted; and that if any keeper of a grocery in said counties shall permit gambling in his place of business, his place shall be declared a nuisance and his license shall be revoked. Acts 1842, 156.

1843. By act approved Jan. 31, 1843, it was provided that the commissioners of Rush, Shelby, Spencer, Harrison, Warrick, Greene, Union, Dubois, Switzerland, Marshall, Cass and Gibson are authorized and required to grant licenses to keep taverns and groceries, to any person applying who shall present a petition to that effect, signed by a majority of the legal voters of the township, any order of said board to the con-

trary notwithstanding, the petitioner complying with the laws now in force, and that the commissioners of Noble, La-grange, Steuben, DeKalb, Whitley, Kosciusko, Fountain, Elkhart, Marshal, Rush, Shelby, Harrison, Hancock, Gibson, Dubois and Delaware may fix the price of license, provided they shall not increase the amount above the prices established by law, and repeals all laws and parts of laws in conflict with this act. Acts 1843, 100.

—Act approved Feb. 2, 1843, repeals so much of the act of 1832, relating to taverns and groceries, as authorizes a majority of the householders and freeholders of a town or township to remonstrate against the granting of a license, so far as relates to the counties of Jennings, Bartholomew and Scott, and declares null and void all orders of the commissioners of said counties relating to the non-granting of licenses; and requires said board to grant license on all applications, otherwise conforming to the law of 1832, and the clerk to grant permits in vacation, provided the applicant pay twenty-five dollars per year until the board fix a price. Acts 1843, 106.

—By Revised Statutes of 1843 it is provided that it should not be lawful to sell liquors within the bounds of any incorporated town, or keep what is commonly called a tippling house, unless, in addition to a county license, he obtain a town license, paying not less than twenty-five dollars, for the benefit of the schools of the town, and fix the fee for county license at not less than ten nor more than two hundred dollars. R. S. 1843, 235, 392.

1844. Act approved Jan. 13, 1844, makes it lawful for the board of Hancock and Carrol counties to grant tavern license in all cases when they may think the public good requires it, and they shall be the sole judges of the amount to be charged for license, and repeals all laws which fix the amount at twenty-five dollars. Acts 1844, 109.

—Act approved Jan. 13, 1844, provides that the board of commissioners of the counties of Adams, Allen, Huntington and Wells are authorized and required to grant licenses to keep taverns and groceries to any person applying, who shall

present a petition to that effect, signed by the requisite number of freeholders, as provided by law, and to determine the price: *Provided*, That it shall not exceed the amount established by law. Acts 1844, 63.

—Act approved Jan. 13, 1844, provides that it shall be unlawful for any person to sell or barter any spirituous or fermented liquors in the town of Greensboro, Henry county, in any less quantity than ten gallons, except for medicinal, mechanical or sacramental purposes, under a penalty of not less than one nor more than three dollars: Acts 1844, 92.

—By act approved Jan. 13, 1844, a majority of the adult white inhabitants of any ward in Lawrenceburg was authorized to forbid a license in said ward until a petition signed by a majority of the adult white inhabitants should petition for such license. Local Laws, 1844, 50.

1845. By act approved Jan. 13, 1845, the town of Lafayette was authorized to grant town license for five dollars. Local Laws 1845, 70.

—By act approved Jan. 13, 1845, it was provided that the townships of Clark county should vote on license, and if a majority of the votes cast were against license none should be granted in that township. Local Laws 1845, 132.

1846. By act approved Jan. 19, 1846, it was provided that no license shall be granted in any township in Floyd county if a majority vote "no license" at the April election, by writing or printing on the back of his ticket "license" or "no license." Local Laws 1846, 245.

—By act approved Jan. 15, 1846, so much of the act of Feb. 2, 1843, as relates to Cass county, was repealed, and the act of Feb. 12, 1841, was restored, except as to the city of Logansport. Local Laws 1846, 269.

—Act approved Jan. 19, 1846, requires the commissioners of Delaware county to grant license to any person applying who shall present a petition to that effect, signed by a majority of the voters of a township, as provided by law, and they shall determine the price of the license, provided that it

shall not exceed the price established by law. Local Laws 1846, 98

—By act approved Jan. 10, 1846, it was provided that no license should be granted in any township in Marion county which had, at the preceding April election, shown a majority for “no license,” indorsed in writing upon the back of the ballot, and that if gambling is permitted in any licensed grocery or coffee house, that fact shall be sufficient evidence that the house is a nuisance and the license shall be revoked. Local Laws 1846, 103.

1847. By act approved Jan. 28, 1847, it was provided that no license shall be granted in any township in Randolph county in which, at the April election a majority shall vote no license, but this shall not prevent the sale of spirituous liquors for medicinal or mechanical purposes. To sell without license a penalty of five to fifty dollars. Local Laws 1847, 194.

—By act approved Jan. 28, 1847, it was provided that no license shall be granted in any township in Jennings county in which, at the preceding April election, a majority for “no license” had been given, and if gambling be allowed in any licensed grocery or coffee house the license should be revoked. Local Laws 1847, 191.

—By act approved Jan. 22, 1847, it was provided that the commissioners of Grant county are authorized and required to grant license to any person applying therefor who shall present a petition to that effect, signed by a majority of freeholders of the township in which the grocery is to be located, on the petitioner complying with the provisions of the laws in force. Local Laws 1847, 401.

—By act approved Jan. 26, 1847, it was provided that no license shall be granted in any township in Laporte county in which, at the preceding April election, a majority had voted “no license.” Local Laws 1847, 350.

—By act approved Jan. 28, 1847, it was provided that no license shall be granted in any township in Henry and Madi-

son counties, in which, at the preceding April election, a majority had voted "no license." Local Laws 1847, 372.

—By act approved Jan. 14, 1847, it was provided that no license should be granted in Wayne county, if, at the preceding April election, a majority of the votes given on the subject, in the county, shall be for "no license." Local Laws 1847, 382.

—By act approved Jan. 8, 1847, the city of Madison was authorized to withhold license when a majority of the householders of the city remonstrated. Local Laws 1847, 214.

—By act approved Jan. 14, 1847, it was provided that every person who sold within the city of Richmond without city license, should be fined two to twenty dollars. Local Laws 1847, 413.

—Act approved Jan. 28, 1847, provides for the voters of the several townships of the several counties, at the April election, to vote against the granting of license by writing "no license." If a majority of the votes cast shall be for "no license," then no license shall be granted for one year in that township, or if granted, it shall be void. The provisions of this act not to apply to Harrison and Rush counties. All acts and parts of acts coming in perview of this act are repealed. Local Laws 1847, 46.

—By act approved Jan. 27, 1847, the city of Evansville was authorized to restrain and prohibit unless licensed by the city. Local Laws 1847, 3.

—By act approved Jan. 23, 1847, the town of Columbus was authorized to prohibit, unless the seller take a town license, at no greater cost than the county license. Local Laws 1847, 101.

1848. By act approved Feb. 14, 1848, it was provided that no person should sell any spirituous liquors within the corporate limits of the town of Centreville, except for scientific or medicinal purposes; nor to any intoxicated person, or person in the habit of becoming intoxicated, under a penalty of not less than two nor more than one hundred dollars to the

state, and of not less than five nor more than five hundred dollars to the town of Centreville, and the circuit court shall give this act specially in charge to the grand jury. Local Laws 1848, 279.

—By act approved Feb. 16, 1848, it is provided that the commissioners of Floyd county shall grant license whenever twenty-four resident freeholders of the township shall recommend it, unless a majority of the legal voters of the township remonstrate. The tax shall be not less than ten nor more than one hundred dollars, which shall go into the school fund of the county, and the act of Jan. 19, 1846, and so much of the act of Jan. 28, 1847, as applies to Floyd county, are repealed. Local Laws 1848, 281.

—By act approved Feb. 14, 1848, the city of Madison was authorized to license or refuse to license, and to prohibit the selling or giving to habitual drunkards or to minors, and for a license she may charge any sum not exceeding \$1,000, and require bond. For selling without license a fine of not exceeding one hundred dollars may be assessed. Local Laws 1848, 92.

—By act approved Feb. 16, 1848, it was made unlawful for any person to sell spirituous liquors within the corporation of Rushville, except for mechanical or medicinal purposes, under penalty of not less than two nor more than fifty dollars. Local Laws 1848, 543.

—By act approved Feb. 16, 1848, it was made unlawful to sell spirituous liquors, by less quantity than ten gallons, except for mechanical and medicinal purposes, under penalty of not less than three nor more than twenty dollars, in Wayne, Washington and Franklin townships, Wayne county. Local Laws 1848, 536.

—By act approved Feb. 2, 1848, it was provided that no person should sell spirituous liquors or wine in Henry township, Henry county, except for medicinal, mechanical or sacramental purposes, under a penalty of not less than five nor more than fifty dollars. Local Laws 1848, 409.

—By act approved Feb. 16, 1848, it was provided that the commissioners of Gibson and Dubois counties should grant license whenever the applicant should produce to the board the receipt of the treasurer for twenty-five dollars, and comply with the law relating to license, which money should go into the school fund of the county, and repeals so much of the act of Feb. 2, 1843, and of Jan. 28, 1847, as relates to Gibson and Dubois counties. Local Laws 1848, 476.

1849. Act approved Jan 16, 1849, provides that no license or permit to retail spirituous liquors in the counties of Decatur, Ripley, Jefferson, Dearborn, Henry, Ohio, Union, Parke, Whitley, and Huntington, unless a majority of the voters at the April election shall signify their assent thereto by indorsing in writing in and upon their ticket the word "license." Penalty, two to twenty dollars. Laws 1849, 83.

—Act approved Jan. 16, 1849, makes it unlawful for any person to sell or barter spirituous liquors in Posey township, Rush county, except for medicinal or mechanical purposes. Laws 1849, 85.

—Act approved Jan. 16, 1849, provides that in Wabash county the voters may indorse their tickets "license" or "no license," and if a majority so indorsed shall be for "no license," then no license shall be granted for one year. Laws 1849, 84.

—Act approved Jan. 11, 1849, provides that no person shall sell, within the township of Dalton, Wayne county, any spirituous liquors to be used for any other than scientific or medicinal purposes, except the same is done under the direction of a regular practicing physician, nor shall sell or give spirituous liquors to a person intoxicated or in the habit of becoming intoxicated. Penalty, two to twenty dollars. Acts 1849, 82.

—By act approved Jan. 17, 1849, it was made unlawful to sell in less quantity than thirty gallons in Adams and Fall Creek townships, Madison county, except for sacramental, medicinal or mechanical purposes. Penalty, five to twenty-five dollars. And it shall be unlawful to vend, barter or exchange in any quantity in Anderson township of said county

except for medicinal, mechanical and chemical purposes, under penalty of five dollars. Laws 1849, 164.

—By act approved Jan. 15, 1849, it was made unlawful to sell in Wayne, Greensboro, Spiceland and Harrison townships, Henry county, except for medicinal, chemical, sacramental and scientific purposes, under penalty of five to fifty dollars. Cider and beer not included. Laws 1849, 194.

—By act approved Jan. 13, 1849, it was made unlawful to sell less than twenty gallons in Mooresville without a town license, except for medicinal, sacramental and scientific purposes. Penalty, two to ten dollars. Acts 1849, 373.

1850. By act approved Jan. 19, 1850, the general law of the State was modified as to Tippecanoe county, so as to require the applicant to give bond in the sum of five hundred dollars that he will keep an orderly house and not sell to minors under the age of eighteen, nor to an intoxicated person, nor suffer gaming; the license fee to be not less than fifty nor more than two hundred dollars, and the penalty for violation not less than ten nor more than fifty dollars, and be committed to jail until fine and cost are paid or replevied. It allows the prosecuting attorney a docket fee of six dollars, to be taxed with the costs. Laws 1850, 218.

—By act approved Jan. 21, 1850, all laws and parts of laws requiring a license in Hancock county were repealed. Laws 1850, 218.

—By act approved Jan. 19, 1850, it was provided that any person selling without license, in Decatur, Ripley, Jefferson, Dearborn, Henry, Union, Parke, Whitley and Huntington counties, shall be subject to indictment, and may be fined not less than ten nor more than twenty dollars, and the act of 1849 was extended to Morgan county. Acts 1850, 119.

—By act approved Jan. 21, 1850, it is provided that the vote taken in Parke, Monroe and Brown counties, each voter may indorse on his ticket the word "license" or "no license," and the votes not so indorsed shall not be counted, and no license shall be granted in any township in which a majority is for no license. Acts 1850, 120.

—By an act approved Jan. 21, 1850, so much of the act of Jan. 16, 1849, as relates to the county of Huntington was repealed. Acts 1850, 121.

—By an act approved Jan. 21, 1850, it was provided that no spirituous or intoxicating liquors whatever shall be sold or bartered within two miles of the postoffice of the town of Plainfield, except for medical, scientific or sacramental purposes, except that the sale of cider and beer shall not be forbidden. Acts 1850, 123.

—By act approved Jan. 17, 1850, no person shall be authorized to sell spirituous liquors in any quantity whatever in Mound township, Warren county, without first procuring a license as for tavern or grocery, and justices of the peace shall have concurrent jurisdiction with the circuit court. Acts 1850, 123.

—By act approved Jan. 18, 1850, the president and trustees of the town of Lewisville were authorized and empowered to pass such ordinance as will effectually prevent the sale and use of intoxicating liquors within the corporation, provided they do not place penalties above ten dollars for each offense. Acts 1850, 124.

—By act approved Jan. 19, 1850, it was made unlawful to grant license in the counties of Gibson and Parke, in any township, unless a majority of the voters give their assent, at the August election, by a vote "for license," and "no license." If the vote "for license" in any township prevails, license may be granted in that township, but not otherwise. Acts 1850, 125.

—By act approved Jan. 21, 1850, it was made unlawful to sell any spirituous liquors in Jackson and Monroe townships, in Madison county, in quantities less than thirty gallons, except for sacramental, medicinal, mechanical and scientific purposes, under a penalty of not less than five nor more than twenty dollars, but if at the ensuing April election either of these townships shall vote "license" then this act to be of no effect in that township. Acts 1850, 126.

—By act approved Jan. 19, 1850, it was provided that in Kosciusko county, in addition to the usual requirements the applicant should give a bond in the sum of \$1,000, conditioned to pay all damages that community or individuals may sustain by reason of said traffic, to support all paupers, widows and orphans, pay the expenses of civil and criminal prosecutions made, growing out or justly attributable to such traffic. Married women may maintain suits for damages, and the money collected shall be for their individual use; no suit shall be entertained for any debt, any part of which was for intoxicating liquor. Suit may be had for the support of paupers who had been in the habit of obtaining liquor of the said licensed person. Penalty not less than ten nor more than one hundred dollars. If at the ensuing April election a majority of the votes cast at the election shall be indorsed "license," then license may be granted under this act in such township, but not in any township where such majority does not appear. Acts 1850, 127.

—By act approved Jan. 21, 1850, it was made unlawful for any person to sell spirituous liquors, wine or strong beer by a less quantity than thirty gallons, within the limits of Blue River township, Johnson county, except for medicinal or sacramental purposes, by a penalty of not less than twenty nor more than twenty-five dollars, and all laws of the state conflicting with this act are repealed so far as Blue River township, Johnson county, is concerned. Acts 1850, 129.

—By act approved Jan. 11, 1850, it was provided that no person should sell, barter or exchange any spirituous or intoxicating liquors whatever, in Ripley township, Rush county, except for chemical, sacramental, medicinal and scientific purposes: *Provided*, That cider and beer shall not be included in this prohibition. Penalty, not less than five nor more than fifty dollars, and justices of the peace shall have full and ample jurisdiction. Acts 1850, 130.

—By act approved Jan. 21, 1850, the law prohibiting the sale of ardent spirits in Wayne township, Henry county, is repealed, and the voters of said township may vote for

license or against license as before the passage of such prohibitory law. Acts 1850, 121.

1851. By act approved Feb. 15, 1851, the act of Jan. 21, 1850, repealing all license law in Hancock county, was repealed as to Green township in said county, and the acts repealed by the act of 1850 were revived and put in force, and so amended that no one could be licensed without being first recommended by twenty-five freeholders, residents of the township, and by paying twenty-five dollars for the use of the common schools of the township: *Provided* that at the ensuing April election a vote shall be taken "for license" and "no license," and if a majority is for license this law to take effect, otherwise to be void. Acts 1851, 124.

—By act approved Feb. 13, 1851, it was provided that in Johnson county no person should be liable to prosecution when the sale was made in good faith for medical, mechanical or sacramental purposes only. Acts 1851, 127.

—By act approved Feb. 8, 1851, it was provided that in Wayne township, Henry county, no person should sell, barter or exchange any spirituous or intoxicating liquors whatsoever except for chemical, sacramental, medicinal and scientific purposes. Cider and beer not included in this prohibition. Penalty, not less than five nor more than fifty dollars. Acts 1851, 125.

—By act approved Feb. 13, 1851, the act of Jan. 21, 1850, prohibiting the sale of intoxicating liquors in Blue River township, Johnson county, was repealed and former laws restored. Acts 1851, 126.

—By act approved Feb. 8, 1851, it is made unlawful for any person to sell or barter any intoxicating liquors except for medicinal, mechanical or sacramental purposes, in the town of Middletown, Henry county, or within one mile thereof, under penalty of not less than twenty-five nor more than one hundred dollars. Acts 1851, 127.

—By act approved Feb. 11, 1851, the act of Jan. 17, 1849, relating to Adams, Fall Creek and Anderson townships, in

Madison county, was amended so as to give justices of the peace exclusive original jurisdiction in all cases arising under said act. Acts 1851, 128.

—By act approved Feb. 13, 1851, it was provided that no person should sell spirituous liquors, wine or strong beer by a less quantity than thirty gallons at a time in Randolph county, except for medicinal, mechanical or sacramental purposes, under penalty of not less than five nor more than twenty-five dollars. At the April election, each year, the inspector shall ask each voter whether for or against retailing liquors, and if a majority of the votes given in any township is against retailing, this act shall be in full force in such township, but in case of a vote in favor of retailing, this act shall not be in force in that township. Acts 1851, 129.

—By act approved Feb. 13, 1851, it was provided that no person should sell any spirituous or intoxicating liquors whatever in Jefferson township, Wayne county, except for chemical, medical and scientific purposes, under penalty of not less than three nor more than twenty-five dollars. Acts 1851, 130.

—By act approved Feb. 6, 1851, it was provided that no one should sell any spirituous or intoxicating liquors whatever, except for medical, mechanical, scientific or sacramental purposes, in any quantity whatever, within the corporate limits of the town of Columbus, unless a majority of the qualified voters of said town, at the corporation election, shall vote for license: *Provided*, That manufacturers may sell by the barrel. Acts 1851, 130.

—By an act approved Feb. 13, 1851, it was provided that no license should be granted to retail spirituous liquors in any township in the county of Jackson, if at the April election a majority of the votes given for or against license shall say no license. Acts 1851, 131.

—By act approved Feb. 12, 1851, the law relating to Kosciusko county of Jan. 19, 1850, was repealed. Acts 1851, 125.

—By act approved Jan. 15, 1851, it was provided that the common council of city of Richmond should be authorized to

employ counsel to prosecute violators of the city ordinance relating to liquors, and a docket fee of two dollars shall be a part of the costs. Local Laws 1851, 101.

—By act approved Feb. 13, 1851, it was provided that the commissioners of Tippecanoe county should fix the price of license at not less than five nor more than twenty-five dollars, according to the capital invested and the liability of the applicant. On application, the commissioners shall require the applicant to give the amount of capital invested, and again, under oath, at every successive session of the board. The auditor may grant permit in vacation, which shall be void unless applicant procure a license. On obtaining a license from the county, the licensed shall pay to the marshal of the city of Lafayette a sum equal to one-half the amount paid the county, for the use of the corporation. Any person selling in Lafayette without procuring a license as aforesaid shall be fined not less than twenty nor more than five hundred dollars, to which may be added imprisonment not more than sixty days and a docket fee of ten dollars. In all prosecutions it shall only be necessary to prove that the defendant keeps a grocery and to all appearances is engaged in retailing spirituous liquors. The city marshal shall demand an inspection of license once every three months, and if the license is not produced he shall be bound over to the next court or be committed to jail. Acts 1851, 121.

—By act approved Feb. 13, 1851, it was made unlawful to consolidate indictments in Dearborn county, before or after trial. Acts 1851, 103.

—By act approved Feb. 13, 1851, it was provided that no person should sell in Richmond, in any quantity whatever, except for the necessary uses of the arts and sciences, under any penalty not exceeding fifty dollars, and the mayor shall have exclusive jurisdiction of offenses against the city ordinance, and no appeal can be taken except in cases above five dollars. Acts 1851, 340.

—By act approved Feb. 12, 1851, the town of Bluffton was authorized to exact a town license. Cost, twenty-five to one-

hundred dollars. Penalty, same as for retailing without county license. For selling to a drunken man, ten dollars fine the first offense, imprisonment twenty-four hours and forfeiture of license for the second. Local Laws 1851, 221.

—By act approved Feb. 7, 1851, the town of Covington was authorized to exact a town license. Cost, ten to one hundred dollars. Penalty, ten to one hundred dollars for the town. Local Laws 1851, 160.

—By act approved Feb. 14, 1851, the city of Lawrenceburg was authorized to grant or refuse license, but should not grant to a tavern for less than fifty dollars nor to a coffee-house for less than seventy-five dollars, and without such license no retailing should be allowed, under a penalty of five to one hundred dollars. And no tippling house shall be kept under a penalty of ten to one hundred dollars, and it shall not be necessary to prove actual sale, but the keeping of the usual implements of a tippling house shall be conclusive evidence. Local Laws 1851, 54.

—By act approved Feb. 13, 1851, the town of Liberty was authorized to regulate or prohibit by reasonable penalties, including imprisonment in county jail not exceeding twenty-four hours. Local Laws 1851, 131.

1852. By act approved June 14, 1852, it was provided that any person selling intoxicating liquors, cider, beer or other drinks within two miles of any collection of inhabitants, met together for worship, shall be fined not less than five nor more than fifty dollars. R. S. 1852, vol. 2, 437.

1853. By act approved March 4, 1853, it was provided that no person should retail in less quantity than one gallon, spirituous liquors, except for sacramental, mechanical, medicinal, chemical or culinary purposes, without the consent of a majority of the legal voters of the proper township who may cast their votes for license at the April election, nor without filing with the auditor his bond in the penal sum of not less than five hundred dollars nor more than two thousand, proportioned according to the number of inhabitants of the township, conditioned for keeping an orderly house, and for the

payment of all fines, penalties and damages that may be incurred under this act. The consent above required shall be obtained by counting only the votes cast for or against license, and the license obtained shall be for only one year. The penalty for violating this act shall be not exceeding two hundred dollars, and the licensed shall not retail on Sunday. Any person who shall, by retailing, cause the intoxication of any person, shall board, keep and take care of such person until he is able to return home, or failing to do so, any person who causes it to be done shall have cause of action against said retailer for reasonable compensation and fifty per cent. damages. No municipal corporation shall receive money for license. All retail places kept in a disorderly manner are declared a nuisance, and the keeper shall be fined not less than twenty-five nor more than one hundred dollars. Any wife, child, parent, guardian or employer who shall be injured in person, property or means of support by any intoxicated person, or in consequence of the intoxication of any person, shall have a right of action against any person or persons, or on their bond, who shall have caused the intoxication, for all damages sustained and for exemplary damages. If any person shall procure the doing of damage for the purpose of enabling suit to be brought for damages, or if such intoxicated person commits any act for such purpose, it shall bar recovery. For all purposes under this act a married woman shall have the same rights as a single woman, and damages recovered by a minor shall be given to the minor, or his parents, or guardian, or next friend, as may be directed by the court. A recovery against a retailer shall be conclusive evidence against his sureties. The provisions of this act in regard to disorderly houses shall apply to licensed persons during the existence of their license. All contracts made by intoxicated persons shall be voidable. All places wherein spirituous liquors are sold in less quantity than one gallon, or suffered to be drank about the premises, are declared a public nuisance, and the keeper shall be fined not less than ten nor more than one hundred dollars. If any prosecuting attorney shall fail to faithfully prosecute any nuisance he shall be fined not less than ten nor more than twenty-five dollars. All laws on the subject of retailing intoxicating

and spirituous liquors heretofore enacted are hereby repealed, but all offenses against those laws shall be punished as if they had not been repealed, and an emergency declared, and this law to take effect from its publication in the *Indiana Journal* and the *Indiana Sentinel*. Laws 1853, 87.

—By act approved Feb. 24, 1853, it was provided that no intoxicating liquors, cider, beer or other drinks shall be sold within two miles of any collection of citizens met together for worship, except at the usual place for doing business for such person. Laws 1853, 90.

1855. By act approved Feb. 16, 1855, it was provided that no person shall manufacture, keep for sale, or sell, by himself or agent, any spirituous or intoxicating liquors, except as hereinafter provided. Ale, porter, malt beer, lager beer, cider, and all wines and fermented liquor which will produce intoxication, and all mixed liquors of which a part is spirituous or intoxicating liquor, are included in the term "intoxicating liquors," and are within the meaning of this act; but the act shall not be construed to forbid the making of cider from apples, or wine from grapes, currents or other fruit grown and gathered in this State, by the manufacturer, or the sale thereof by him, but such manufacturer shall not sell less than three gallons at one time, and all thus sold shall be taken away at once. This act shall not forbid the sale, by importers, provided the goods remain in the original packages and in the same quantities.

The county commissioners may give authority to manufacture, at such places within the county as they may designate, and to sell the same at such places only, in any quantities, to the duly authorized agents of the several counties, for not more than one year, and the authority may be revoked at any time. All persons engaged in the manufacturing at the time of the passage of this act shall be entitled to this authority, as long as they conform to this law. Before this authority is granted the applicant shall give bond in not less than one thousand dollars, nor more than six thousand, that said applicant will not violate the law. If he violate he shall be sued on the bond, and his authority shall cease from the first vio-

lation, and no authority to manufacture shall be given to any one who has been convicted of violating this law.

The commissioners may appoint some suitable person or persons as agent or agents of the county for the purchase of pure and unadulterated spirituous and intoxicating liquor, and for the sale thereof, for medicinal, chemical and mechanical purposes only, and pure wine for sacramental use. Not more than two such agents in any one township, unless the township contain over ten thousand inhabitants, in which case there may be two for every ten thousand and one for each five thousand over the ten thousand; but no inn-keeper, or keeper of an eating-house, boarding-house, grocery, oyster shop, fruit store, bar-room, confectionery, or other place of public entertainment, or the keeper of any theater, museum, or other place of public resort, or the captain or servant of or on any vessel, boat or water craft, may be appointed such agent. Every agent shall hold his office for one year. He shall sell such liquors only in one place. He shall keep an account of all his purchases and sales, and the name of the person from whom bought and to whom sold, with date, quantity, price, and for what use intended, as stated by the purchaser, which shall at all times be open to public inspection. He shall report to the commissioners under oath every three months, and shall receive such compensation as the commissioners shall prescribe. He shall sell at twenty-five per cent. above cost, and no more; but the county shall not be liable for any debt of such agent. He shall not allow any liquor sold by him to be used on the premises where sold, and he may sell in the following cases only: To any person of the age of twenty-one, being of good character for sobriety, and an inhabitant of the county, or of a township adjoining said county: *Provided*, That he shall have good reason to believe the liquor is to be used for one of the above purposes, or to any person authorized by law to sell. The commissioners shall direct the county treasurer to pay over to each agent such sums of money as they may deem proper, or the agent may furnish the money himself, at a lawful interest, in addition to his compensation. The agent shall give bond in penal sum of

not less than one thousand dollars nor more than five thousand. For manufacturing contrary to law, a fine of not less than twenty dollars nor more than fifty for the first offense, not less than fifty nor more than one hundred for the second offense, and one hundred for any subsequent offense, and shall be imprisoned in the county jail thirty days for each offense after the first. Any person who shall sell or give intoxicating liquor contrary to this act, shall be fined not less than twenty dollars nor more than fifty for the first offense, for the second not less than fifty nor more than one hundred, and for every subsequent offense one hundred dollars, and shall be imprisoned in the county jail thirty days for every offense after the first.

All clerks, agents or servants who violate this law may be convicted, whether the principal is or not, and all persons who purchase under false pretenses shall be fined ten dollars. For owning, with intent to sell, contrary to law, the same penalty as for selling contrary to law. The finding of liquors in a tavern, public eating-house or other place of public resort shall be evidence of intending to sell contrary to law, and all such liquors shall be declared a nuisance, and shall be forfeited. If any three persons of good moral character, residents of the county, shall complain before a mayor or justice of the peace that liquor is kept, contrary to law, in a specified place, as they have reason to believe, the sheriff, or any constable or marshal shall be required to search said premises and to seize all such liquors and keep them until lawfully disposed of, but no warrant shall be issued to search a dwelling-house which is not a part of a tavern or other place of public resort, unless the occupant thereof shall have been convicted of having sold liquor in his dwelling within six months. Whenever any liquor shall have been seized, the justice or mayor shall summon the owner to appear and to show cause why it should not be confiscated and destroyed, and either party may demand a jury. If it be found that the liquor is kept for unlawful sale, the liquor shall be destroyed, and the vessels sold to pay cost. If found otherwise, the liquor shall be returned to the place from which taken. Any devise or contrivance made use of to sell and conceal or dis-

guise the seller, is declared a nuisance, which shall be abated by destruction or otherwise; and any person resorting to such device shall be fined not less than fifty nor more than two hundred dollars, and imprisoned not less than thirty nor more than ninety days. It shall be the duty of every sheriff, deputy sheriff, constable or marshal, to arrest on sight every person by them seen in the violation of this law, and to seize all liquors found in their possession, which shall be proceeded against as above provided; and every such officer shall arrest every intoxicated person by them seen in any public place, and take him to a justice or mayor, who shall require him to testify as to whether this law has been violated, and in case he refuses, to imprison him in the county jail until he testify. Any person who shall drug or adulterate intoxicating liquors shall be fined not less than twenty-five nor more than two hundred dollars, and be imprisoned thirty days. No person, who is a habitual drinker of intoxicants, or who is or shall have been engaged in unlawful manufacture or sale, shall be competent as a juror in cases under this act. All contracts made in consideration of illegal sale of intoxicants shall be void, and the money paid in such illegal sale may be recovered. Burning fluids, perfumery, essences, chemicals, dyes, paints, varnishes, cosmetics, solutions of drugs, medicinal compounds, or any other article compounded in part of spirituous liquors, if not adapted to use as a beverage, are not prohibited. The city attorney shall prosecute all cases before the city court, and the district attorney, by himself or deputy, before justices and other courts, all of which have original and concurrent jurisdiction. Prosecutions before justices or mayors shall be upon complaint, under oath, and before court of common pleas, on complaint or information. A docket fee for the prosecutor, of five dollars, shall be a part of the cost. If any person, claiming to have an interest in any liquors seized shall fail to set up that claim at the investigation, his interest is forfeited, and any judgment shall operate as a judgment *in rem.* and its validity shall not be questioned, except by appeal, and no replevin or any other action to try the validity of proceedings but by appeal, which may be taken as in all other causes. Liquor seized shall be kept in the cus-

tody of the county agent for thirty days. If no appeal is taken within thirty days, it shall be destroyed. If the judgment is against the state, the prosecuting attorney may appeal in three days, without bond. In case of a final decision against the state the county shall pay the costs of keeping, conveying and returning the liquors, but shall be liable for no other costs, except of imprisonment. Informalities in bond shall not impair its validity, and suit may be brought on bond in the circuit or common pleas courts. It need not be stated in complaint or information that a given offense is the second or any subsequent offense. If brought out in the evidence, the penalty shall be accordingly. All acts or parts of acts inconsistent with the provisions of this act are repealed, but the repeal shall not affect prosecutions begun under former acts. No intoxicants shall be given away in any tavern, boarding-house or other place of public entertainment, or on boats carrying passengers. This act to take effect June 12, 1855. Acts 1855, 209.

—By act approved March 2, 1855, the act of March 4, 1853, is repealed, and all licenses granted under it shall cease June 12, 1855, and an emergency declared for the immediate taking effect of this act. Acts 1855, 224.

1858. By act approved Dec. 21, 1858, the act of Feb. 16, 1855, was repealed. Laws 1858, 40.

1859. By act approved March 5, 1859, it was provided that no person should sell intoxicating liquors in less quantity than a quart without first procuring a license, nor shall any person without license sell to be drank about his premises, and the word "intoxicating liquors" is defined to mean "any spirituous, vinous, or malt liquor, or any intoxicating liquor whatever, which is or may be used as a beverage." Any white male inhabitant must give notice by publishing in a weekly newspaper in the county, the precise locality, at least twenty days before the meeting of the board, and it shall be the privilege of any inhabitant of the township to remonstrate in writing on account of immorality or other unfitness. The board shall grant such license on proof of the above notice, and that the applicant is of good character

and fit to be trusted with said license, and on giving bond conditioned that he will keep an orderly and peaceable house, and that he will pay all fines and costs that may come against him, and paying fifty dollars to be expended for common school purposes, but no license shall be granted for less than one year. Such person shall not sell on Sunday nor to any person under twenty-one, nor to a person intoxicated, nor upon any election day. If he sell to any person who is in the habit of being intoxicated, after notice shall have been given him by the wife, child, parent, brother or sister of such person, or by the overseer of the poor, that such person is in the habit of being intoxicated, he shall be fined not less than five nor more than fifty dollars. Any person, not licensed, who shall sell, shall be fined not less than five nor more than one hundred dollars, to which may be added imprisonment not more than thirty days. The penalty for selling to a minor or to an intoxicated person is a fine of not less than five nor more than one hundred dollars, and the offender may be imprisoned not more than thirty days. A penalty of not less than fifty nor more than five hundred dollars, and optional imprisonment of not more than ninety days, is affixed for adulterating liquors. Every place where liquors are drank, if kept in a disorderly manner, shall be deemed a nuisance and the keeper fined not less than fifty nor more than two hundred dollars, and optional imprisonment, not less than three months. Justices of the peace shall have jurisdiction in all cases under this act, but if the justice believe the case requires a fine of more than twenty-five dollars, he shall recognize the offender to court. All laws conflicting are repealed, but nothing shall be construed to prohibit towns and cities from demanding a license fee within their respective limits, and an emergency declared. Acts 1859, 202.

—An act was approved March 3, 1859, authorizing the county commissioners to reimburse any person who may have suffered loss by the seizure and destruction of property under the prohibitory law of 1855, and any officer against whom judgment may have been obtained because of the execution of said law, or any person who may have been put to cost in

suing out a writ of habeas corpus under that law. Laws 1859, 118.

—By act approved March 3, 1859, it was provided that no person shall sell intoxicating liquors within one mile of any place of worship or agricultural fair, except at a regular place of business, under penalty of not less than five nor more than twenty-five dollars. Acts 1859, 126.

1861. By act of March 11, 1861, it was provided that any applicant for license, or any one remonstrating, may appeal from the action of the commissioners to the circuit or common pleas court, and may demand a jury, and the decision of jury shall be final, and without appeal therefrom. Acts 1861, 143.

1865. By act approved Dec. 19, 1865, the act of 1859 was so amended as to attach a penalty of not less than ten nor more than fifty dollars for any person having license to sell on Sunday, election days, etc. Acts special session 1865, 197.

1873. By act approved Feb. 27, 1873, it was made unlawful to sell or give away for the purpose of gain, any intoxicating liquors to be drank about the premises without obtaining a permit from the county commissioners. The applicant shall file with the auditor, not less than twenty days before the regular meeting of the board, a petition in writing, setting forth the exact locality, and that the applicant is a voter in the county, and that he is a proper person to have such a permit, signed by a majority of the legal voters resident in the ward, town or township. This petition shall be kept on file until the next regular session of the board. If the board is satisfied that the petition is in regular form, they shall grant the permit on the applicant's paying expenses of such filing, etc., and filing a bond in the sum of three thousand dollars, conditioned for the payment of all fines and costs and all damages resulting from the use of liquors sold by him. The whole vote cast for candidates for congress at the last preceding election in a township, and the whole number cast for councilman or trustee at the last preceding municipal election shall be deemed the whole number of voters. Any person not a

voter, or any person who shall sign the name of another without permission, shall be fined not less than fifty dollars nor more than one hundred for each signature so made. All permits shall be for one year, and the man permitted shall keep, in a conspicuous place in the room where the liquor is sold, a certificate of his permission and the date at which it expires. For violating any of the provisions of this act he shall forfeit his permit, and no new permit shall be granted for five years. He shall not sell to minors or intoxicated persons, or to persons in the habit of getting intoxicated. Places where liquors are sold, in violation of this act, shall be declared a nuisance and shall be shut up, and the keeper shall be fined from twenty to fifty dollars. Any person who shall cause the drunkenness of another shall be liable for reasonable compensation for the taking care of said drunken person. Any drunken person shall be fined five dollars and shall designate from whom he obtained the liquor or be imprisoned not less than one or more than ten days. No liquor shall be sold on Sunday, or on election day, or on Christmas, Fourth of July, Thanksgiving, or any public holiday, or between nine P. M. and six A. M. The penalty for violating this is not less than five nor more than twenty-five dollars. Any device to evade this act by any person keeping liquors for sale shall be unlawful. Any husband, wife, child, or the township trustee, or any other person who shall be injured by the intoxication, habitual or otherwise, of another, shall have recourse at law for damages and for exemplary damages, and the real estate in which the liquor is sold shall be liable for all such damages. Married women shall have the same rights as unmarried, and minors may sue by parent or next friend, and all judgments shall be without relief from appraisement laws. For selling without permit, a fine of not less than ten nor more than fifty dollars, or imprisonment not less than ten nor more than thirty days. All fines shall be a lien upon personal and real property, and the offender shall be committed until all is paid. Justices shall have jurisdiction in all damage cases unless the amount claimed shall exceed two hundred dollars. No person shall buy for or furnish to any intoxicated person or minor under penalty from five to fifty dollars. It shall not be

necessary to state the kind of liquor sold, nor describe the place where sold, or the name of the person to whom sold. The person to whom sold shall be a competent witness. All acts and parts of acts conflicting with this act are repealed, but towns and cities may demand and enforce a fee for permit from keepers of coffee houses, saloons and other places when liquors are sold and drank within their limits. The law to take effect from its passage, but not to vitiate existing licenses. Acts 1873, 151.

—By act approved March 7, 1873, the town of Huntington was authorized to charge a license fee of twenty-five to five hundred dollars. Acts 1873, 149.

1875. By act approved March 11, 1875, it was provided that any officer who shall voluntarily become intoxicated within the business hours of his office, or shall be in the habit of becoming intoxicated, shall forfeit his office, and be removed therefrom, upon complaint filed by any citizen of the state. Acts 1875, 91.

—By act approved March 17, 1875, it was provided that no person should sell any spirituous, vinous or malt liquors, in less quantities than one quart without a license, nor shall any person, without a license, sell any intoxicating liquor to be drank about his premises. The words "intoxicating liquors" to mean any spirituous, vinous or malt liquors, or any intoxicating liquors whatever, which may be used as a beverage. To obtain a license by any male inhabitant over twenty-one years, notice shall be given, by publication in a newspaper, of the precise locality, at least twenty days before the meeting of the board, and any voter of the township may remonstrate in writing, on account of immorality or other unfitness. He shall give bond in the sum of two thousand dollars, conditioned to keep an orderly and peaceable house, and to pay all fines: *Provided*, That he be a fit person to be entrusted with the business, and is not in the habit of becoming intoxicated. No appeal taken from the board to the court shall estop the licensed man from selling until the close of the term of court to which appeal is taken. For a license for spirituous liquors the fee shall be one hundred dollars, for

vinous and malt only, fifty dollars, and cities and towns may charge one hundred dollars. All licenses shall be for one year. No licensed person shall sell on Sunday or any legal holiday, or on election day, nor between eleven P. M. and five A. M., under penalty of not less than ten nor more than fifty dollars, and for a second conviction he shall forfeit his license. He shall not sell to any person who is in the habit of being intoxicated, after notice not to sell has been given by wife, child, parent, brother or sister, or township trustee, under penalty of from ten to fifty dollars. Any sane person found drunk in a public place shall be fined from two to ten dollars. Any person selling without a license shall be fined not less than twenty nor more than one hundred dollars, and may be imprisoned not more than six months. For selling to a minor or to a drunken man he shall be fined not less than ten nor more than fifty dollars. For adulterating liquors a fine of not less than fifty nor more than five hundred dollars, to which may be added imprisonment not more than six months. The place where liquors are sold, if kept in a disorderly manner, is a nuisance and the keeper shall forfeit his license, and be fined not less than ten nor more than one hundred dollars. Grand juries shall take cognizance of this act, and justices of the peace shall have jurisdiction, and may fine twenty-five dollars and less or bind the defendant to court. All former laws regulating the sale of liquors, and all parts of laws conflicting with this, are repealed, and an emergency declared. Acts 1875, 55.

1877. By act approved March 5, 1877, it is provided that it shall not be lawful to sell on Sunday, Fourth of July, New Year's, or Christmas, Thanksgiving or election days, under penalty of not less than ten nor more than fifty dollars, to which may be added imprisonment not exceeding sixty days; and no druggist nor druggist's clerk shall sell on those days, except upon a written prescription of some regular practicing physician, under penalty of not less than five nor more than one hundred dollars, to which may be added imprisonment not more than sixty days. Acts 1877, 92.

—By act approved March 1, 1877, incorporated towns

were authorized to license the sale of spirituous, vinous, malt and other intoxicating liquors, at a sum not exceeding the prices charged by the state. Acts 1877, 144.

1879. By act approved March 31, 1879, incorporated towns were authorized to license the sale of spirituous, vinous, malt and other intoxicating liquors, and to charge not exceeding the amount charged by the state. Acts 1879, 202.

1881. The legislature of 1881 proposed to submit to the voters of the state the following amendment to the constitution:

SECTION 1. The manufacture, sale, or keeping for sale in said state, spirituous, vinous, malt liquors, or any other intoxicating liquors, except for medical, scientific, mechanical, and wines for sacramental purposes, shall be and is hereby forever forbid.

SEC. 2. The General Assembly of the State of Indiana shall provide by law in what manner, by whom, and at what places such liquors shall be manufactured or sold for medical, scientific, mechanical and sacramental purposes. Acts 1881, 720.

---By act approved April 14, 1881, it was provided that whoever, holding an office, becomes intoxicated during the business hours of his office, shall be fined from ten to one hundred dollars, to which may be added imprisonment not more than ten days, and for the second offense he may be deprived of office by the judgment of the proper court. Acts 1881, 204.

—By act approved April 14, 1881, it was provided that whoever is found drunk in any public place shall be fined not exceeding five dollars; for a second offense not more than twenty-five dollars; for a third not more than one hundred, and may be imprisoned in the county jail not more than thirty days nor less than five and be disfranchised for any determinate period. For selling, etc., to a drunken man, knowing him to be intoxicated, he shall be fined not more than one hundred dollars nor less than ten, and he may be imprisoned not less than thirty days nor more than one year, and be disfranchised any determinate period. For selling to a minor

he shall be fined not less than twenty nor more than one hundred dollars. For a minor to misrepresent his age, he shall be fined not less than ten nor more than one hundred dollars. Whoever furnishes intoxicating liquor to a prisoner, except when prescribed by a physician, shall be fined not less than twenty nor more than one hundred dollars. Whoever shall sell, etc., on Sunday, the Fourth of July, Christmas, New Year's, Thanksgiving, or any legal holiday, or any election day, or between eleven P. M. and five A. M., shall be fined not less than ten nor more than fifty dollars, and may be imprisoned not less than ten nor more than sixty days, and any druggist who shall sell on any of these days, except on a written prescription of a physician, shall be liable to the same penalties. And any person who shall sell, etc., within one mile of any religious or agricultural meeting, except it be at his regular place of business, shall be fined not less than ten nor more than fifty dollars and imprisoned not more than ten days. Acts 1881, 214.

DECISIONS.

1828. One Silas Townsend had obtained a license in Morgan county, three months, by the payment of fifty cents. He was indicted and fined two dollars as selling without license. He appealed. Held, that as the law of 1824 provides that license to retail spirituous liquors shall not be for less than five dollars, such license was void, and that "because it has long been seen that the practice of retailing spirituous liquors is productive of serious evils to the community, it has long been a subject of legislative interference, therefore every prerequisite for granting a license should be strictly required." A license to retail spirituous liquors is a license to keep a tavern, and vice versa. *Townsend v. The State*, Morgan C. C., May term, 1828. Holman, J. 2 Blackford, 151. Affirmed.

1829. An indictment for retailing spirituous liquors to divers persons without license is bad. It should either contain the names of the persons to whom the sale was made or state their names to be unknown. *State v. Stucky*, Nov. term, 1829. 2 Blackford, 289.

1831. The wife had sold liquor and the husband was indicted, found guilty and fined, he having no license. Held, that a wife committing an offense without the presence or coercion of the husband is regarded as a feme sole. She alone is responsible. *Pennybaker v. The State*, Nov. term, 1831, Owen C. C. McKinney, J. 2 Blackford, 484. Reversed.

1832. A conveyance may be avoided by a grantor if, at the time of its execution, he was too drunk to know what he was doing. *Harbison v. Lemon*, May term, 1832. Blackford, J. 3 Blackford, 51. Reversed.

1835. An indictment for selling spirituous liquors to an Indian is not void because the name of the Indian is omitted, if stated in indictment that name is unknown. *State v. Jackson*, Allen C. C., May term, 1835. Blackford, J. 4 Blackford, 49. Reversed.

1839. The privilege to sell spirituous liquors, granted by the county board, is called a license; granted by the county clerk, in vacation, a permit. In either case the man has a license, according to law. *State v. Watson*, Parke C. C., May term, 1839. Sullivan, J. 5 Blackford, 155. Reversed

—A license to sell spirituous liquors is not assignable. *Godfrey v. The State*, Randolph C. C., May term, 1839. Blackford, J. 5 Blackford, 151. Affirmed.

—An innkeeper is not liable to indictment for the selling of spirituous liquors by his barkeeper, without his knowledge. *Hipp v. The State*, Union C. C., May term, 1839. Blackford, J. 5 Blackford, 149. Reversed.

—The selling of port wine in less quantities than a quart is not a violation of the statute which prohibits the sale of spirituous liquors. *State v. Moore*, Fountain C. C., May term, 1839. Dewey, J. 5 Blackford, 118. Affirmed.

1840. A remonstrance by a majority of the freeholders of a town under the revised statutes of 1833, which says, "No license shall be granted where a majority of the freeholders of the town shall remonstrate against the granting of the same," is good though it is general in its terms and covers a period of three years. "The object of the law is to protect public morals and to preserve the peace and quiet of society, and the law should be so construed as to promote it." *Woods and others v. Pratt*, Franklin C. C., Nov. term, 1840. Sullivan, J. 5 Blackford, 377. Reversed.

1841. An indictment for retailing spirituous liquors within the borough of Vincennes, without license by the president and trustees, need not aver the existence of the corporation, nor of an ordinance regulating the sale, nor show the kind of liquor sold. *State v. Graeter*, Knox C. C., Nov. term, 1841. Sullivan, J. 6 Blackford, 105. Reversed.

1842. An indictment for selling spirituous liquors, under section 56, of crimes and punishments, of revised statutes of 1833, must aver that it was to be drank on the premises. *State v. Freeman*, DeKalb C. C., Nov. term, 1842. Sullivan, J. 6 Blackford, 248. Affirmed.

1843. An indictment for selling spirituous liquors without license need not state the kind of liquor sold. *State v. Mullinex*, Nov. term, 1843. 6 Blackford, 554. Reversed.

—A public and disorderly liquor and store house in a town, in and about which dissolute persons are permitted, for lucre, to remain at night and in the daytime, drinking, tippling, carousing, swearing, hallooing, etc., to the damage, disturbance, etc., is a public nuisance at common law, and the keeper of it is indictable. *State v. Bertheol*, Shelby C. C., Nov. term, 1843. Dewey, J. 6 Blackford, 475. Reversed.

1844. On an indictment for selling without license the prosecutor need not prove that the defendant had no license. *Sharer v. The State*, Noble C. C., May term, 1844. Blackford, J. 7 Blackford, 99. Affirmed.

1846. If, on an indictment against three, for a nuisance, the jury find one guilty and say nothing of the others, judgment may be rendered against the one. *Bloonhuff v. The State*, Allen C. C., Nov. term, 1846. Dewey, J. 8 Blackford 205. Affirmed.

—If a person having a license causes or procures, for lucre, evil disposed persons to congregate in and about the house in which liquor is sold, and permits them to remain there, drinking, cursing, blackguarding, fighting, etc., the house is a public nuisance, and the keeper is indictable. *State v. Mullikin*, Johnson C. C., Nov. term, 1846. Perkins, J. 8 Blackford, 259. Reversed.

—An indictment, charging the sale of liquor in Noble county, without license, to be drank in the house of the seller, sufficiently locates the house in Noble county. *State v. Shearer*, Noble C. C., Nov. term, 1846. 8 Blackford, 262. Reversed.

—The act of 1843, p. 235, authorizes the county treasurer in vacation to determine the sum to be charged, for a year, for license, and to receive the same. *Place v. The State, Laporte C. C.*, Nov. term, 1846. 8 Blackford, 319. Affirmed.

1847. The original charter of the city of Richmond, given in 1840, provides that the city shall have the exclusive right to fix the rates of all licenses to retailers of spirituous liquors, at such sum as they may deem best for the interest of said city, and shall, moreover, have power to refuse the vending of spirituous liquors altogether. Pursuant to this provision, an ordinance was passed to fine not less than one nor more than five dollars, for selling in less quantities than a quart "except for the use of the sick." One Sloan was indicted in the Wayne Circuit Court, in 1844, for selling without license. He answered that if he had offended it was against the city of Richmond, which had exclusive jurisdiction in such cases. Held, the city of Richmond has the right, under its charter, to prohibit entirely, but has no right to allow the business without a license, so as to excuse the offender from liability to the penal laws of the state. But further, the revised statutes of 1843 provides that all persons selling, etc., shall obtain a county license, and section 27, chapter 25, of general laws relating to towns and cities, requires a corporation license in addition to county license. *Sloan v. State, Wayne C. C.*, May term, 1847. Smith, J. 8 Blackford, 363. Affirmed.

1848. In January, 1846, the legislature enacted that the county commissioners should grant license to sell, etc., only in such townships, in Marion county, as should affirmatively vote, at the April election, in favor of such license, in addition to the certificate of good moral character and the averment by a certain number of freeholders that a retailing, etc., is necessary, etc. At the April election, 1846, Center township voted against such license. Subsequently one Charles Garner sold without license. He was indicted and fined. He appealed. The plea was that the penal section (93 R. S. 1843, 979) was repealed as to Marion county by the act of 1846, because it prohibits the obtaining of a license in Center township. Held, this only adds one more condition to obtaining a license

to those already existing, and is therefore no more necessarily prohibitory than the old law where the requisite number of freeholders and other conditions could not be obtained. *Garner v. State*, Marion. C. C., Jan. term, 1848. Perkins, J. 8 Blackford, 568. Affirmed.

1848. Retailing, without having a license from the city of New Albany, is not an offense against the State, and is not indictable. *Bogart v. City of New Albany*, Floyd C. C., May term, 1848. Perkins, J. 1 Ind. 38. Reversed.

1849. To contract for selling a quart of whisky and to deliver only a pint at a time, is to sell in less quantities than a quart. *Murphy v. The State*, Decatur C. C., May term, 1849. Blackford, J. 1 Ind. 366. Affirmed.

1850. Section 4 of the act of 1849 relating to the sale, etc., in Parke and other counties, is null, containing no prohibition whatever, but the act of 1849, not specifically repealing the law of 1843, does not repeal that law, hence the penalty is still in force. *Cheezem v. State*, Parke C. C., May term, 1850. Blackford, J. 2 Ind. 149. Affirmed.

1851. The 93d section of chapter 53, statute of 1843, not only defines the offense, but prescribes the punishment. The acts of 1847 and 1849 relating to voting are to be considered as only regulatory. *King v. State*, Jefferson C. C., May term, 1851. Blackford, J. 2 Ind. 523. Affirmed.

—To allege that the defendant erected and kept a certain tippling house wherein liquor was sold without license, and which was kept in a disorderly manner, is good. *The State v. Zimmerman*, Gibson C. C., May term, 1851. Blackford, J. 2 Ind. 565. Reversed.

—Though the statute contains no exception in favor of a sale for medical purposes, yet in construing it is proper to look to its effects. Statutes ought not always be construed literally. If the liquor was sold in good faith and with due caution, to be used as a medicine, it is not a violation of the law. *Donnell v. State*, Johnson C. C., May term. Blackford, J. 2 Ind. 658. Reversed.

1852. If the grand jury could have learned the name of the person to whom liquor was sold, but did not, an indictment can not be sustained. *Blodget v. The State*, Switzerland C. C., May term, 1852. Blackford, J. 3 Ind. 403. Reversed.

—The use of the word "spiritual" instead of spirituous in an indictment, which also charges that the defendant sold a half pint of "spirituous liquors," is not sufficient to set aside the indictment. *State v. Clark*, Boone C. C., Nov. term, 1852. Blackford, J. 3 Ind. 451. Reversed.

—The indictment charged the sale by Farrell and Boyle. Evidence showed that each had sold to one Jenkins at different times, in the same house and at the same bar, but no joint sale was shown, nor that either participated in the act of the other. Held, the indictment was not sustained. *Farrell v. State*, Vanderburg C. C., Nov. term, 1852. Davidson, J. 3 Ind. 573. Reversed.

1853. Section 95, chapter 53, R. S. 1843, says: "Sell, etc., to a minor without the consent of his parent or guardian." The indictment omits the phrase "or guardian." The motion to quash for this omission should have been overruled, as the presumption is in favor of the parent being alive. *The State v. Shoemaker*, Posey C. C., May term, 1853. Stuart, J. 4 Ind. 100. Reversed.

—An indictment for selling without license, by retail, which omits to state the price for which the liquor was sold, is bad on motion to quash. *Divine v. The State*, Jefferson C. C., May term, 1853. Stuart J. 4 Ind. 240. Reversed.

—After a verdict against a defendant for selling without license, a motion for a new trial will not be granted because the price for which the liquor was sold was omitted in the indictment. *Hare v. The State*, Jefferson C. C., May term, 1853. Stuart, J. 4 Ind. 241. Affirmed.

—It is competent for the legislature to declare any practice deemed injurious to the public a public nuisance, and to punish it accordingly. *Bepley v. The State*, Hamilton C. C. P., May term, 1853. Stuart, J. 4 Ind. 264. Affirmed.

—An indictment charged that the defendant unlawfully bartered, sold, etc., one pint of spirituous liquor, but did not state in terms that the quantity sold was less than a quart. Held, that the charge was good.

There were several indictments against the defendant. Prosecuting witness could not state positively that a given testimony related to the offense on which defendant had already been convicted, but testified that he kept a bar with bottles, etc., and that he had for many days, several times a day, bought liquor at the bar. Held, that from such evidence the inference might be safely indulged that the offenses were different. *Willard v. The State*, Gibson C. C., Nov. term, 1853. Stuart, J. 4 Ind. 407. Affirmed.

—Same question decided the same way. *Fisher v. The State*, two cases, Gibson C. C., Nov. term, 1853. 4 Ind. 409. Affirmed.

—Information for retailing without license containing no averment of the price of the liquor sold is bad. *The State v. Lockstand*, Tippecanoe C. C. P., and *The State v. Miles*, Tippecanoe, Nov. term, 1853. 4 Ind. 573. Affirmed.

—Same question settled. *The State v. Miles*, Tippecanoe, C. C. P. 4 Ind. 577. Affirmed.

—Same question settled. *The State v. Boyle*, Tippecanoe C. C. 4 Ind. 573. Affirmed.

—Same question settled in *The State v. Hurley*, Tippecanoe C. C. 5 Ind. 574. Affirmed.

—An information under the first section of the act of 1853 did not aver that the liquor sold was not for sacramental, mechanical, chemical, medicinal or culinary purposes. This was bad on motion to quash. *Brutton v. The State*, Dearborn C. C. P., Nov. term, 1853. Stuart, J. 4 Ind. 601. Reversed.

—Same question decided same way. *Brutton v. The State*, Dearborn C. C. P., Nov. term, 1853. Perkins, J. 4 Ind. 602. Reversed.

—One Rust, March 15, 1853, sold liquors in Lawrenceburg, under a license obtained June 17, 1852, for one year.

The legislature of 1853 passed a law regulating retailing liquors, approved March 4, 1853, under which the indictment was found. That law was not in force till March 19, four days subsequent to the transaction, hence there was no law prohibiting the sale. The court adds, "that we think it clear also that the license constituted a valid defense. Under the laws in force at the time of granting the license it was competent to grant a license for one year." *Rust v. The State*, Dearborn C. C., Nov. term, 1853. Davison, J. 4 Ind. 528. Reversed.

—A license granted under the law in existence Nov. 7, 1852, is good for a year, notwithstanding the law of 1853. *Lemon v. The State*, Dearborn C. C. P., Nov. term, 1853. Roach J. 4 Ind. 603. Reversed.

—At the June term, 1851, the board of commissioners of Switzerland county, on the petition of twenty-four freeholders, ordered that one Crutz should have license on the payment of fifty dollars and giving bond. C. paid the money and prepared the bond with sufficient security. Meanwhile the order was set aside, and an order to refund the money to Crutz was made. Crutz proceeded to sell, assuming that the order of the board was final. He was indicted and fined. Held, that the order of the board was inoperative without the approval of the bond, and gave Crutz no authority to retail. Held also, that the board had power to set aside its order at any time before approval of the bond. *Crutz v. The State*, Switzerland C. C., Nov. term, 1853. Davison, J. 4 Ind. 385. Affirmed.

—It is competent for the legislature to declare any practice deemed injurious to the public a nuisance, and to punish it accordingly. A single sale, suffered to be drank on the premises, and keeping bottles, etc., under the law of 1853, may by a jury be pronounced a nuisance. *Bepley v. The State*, Hamilton C. C. P., May term, 1853. Stewart, J. 4 Ind. 264. Reversed.

—So much of the act of 1853 as relates to voting by townships is unconstitutional, because it suspends or may suspend the operations of law, and the law is dependent on a popular

vote, and because it is not general and uniform in its operation. As a license law it is complete in itself, and Maze having sold without license, was properly convicted. *Maze v. The State*, Tippecanoe C. C. P., Nov. term, 1853. Stuart, J. 4 Ind. 342. Affirmed.

—The local law, relating to intoxicating liquors in Tippecanoe county, passed 1851, was not repealed by the new constitution. Section 7 of that law which makes the keeping a grocery, with the usual accompaniments of a tippling house, sufficient to produce conviction, does not constitute a separate offense, but only a new rule of evidence. *State v. O'Connor*, Tippecanoe C. C. P., Nov. term, 1853. Roache, J. 4 Ind. 299. Affirmed.

—The act of 1853 does not prescribe any penalty for selling on Sunday. *Rosenbaum v. The State*, Dearborn C. C. P., Nov. term, 1853. Stuart, J. 4 Ind. 599. Reversed.

—An indictment must show the name of the person to whom the sale is made or must aver that the name is unknown. *State v. Burgess*, Tippecanoe C. C. P., Nov. term, 1853. 4 Ind. 606. Affirmed.

—An information must aver the price for which liquor is sold. *The State v. Lockstand*, Tippecanoe C. C. P., Nov. term, 1853. 4 Ind. 572. Affirmed.

—Two other cases, same parties, same question, same decision. 4 Ind. 573.

—Same question, same decision. *The State v. Boyle*, Tippecanoe C. C. P. 4 Ind. 607.

—Same question, same decision. *The State v. Hurley*, Tippecanoe C. C. P. 4 Ind. 574.

—Same question, same decision, three cases. *State v. Boyle and another*. 4 Ind. 573.

—Same question, same decision. *The State v. Miles*, Tippecanoe C. C. P. 4 Ind. 577.

1854. Section 26, p. 435, R. S. 1852, which relates to selling to minors, was repealed by the general repealing clause

of the act of 1853. *Brosee v. The State*, Vanderburg C. C. P., May term, 1854. Perkins, J. 5 Ind. 75. Reversed.

—The price of the liquor sold must be alleged. *Snyder v. The State*, Decatur C. C., May term, 1854. Stewart, J. 5 Ind. 194. Reversed.

—So much of the law of 1853 as relates to voting is unconstitutional. *Aker v. The State*, Randolph C. C. P., May term, 1854. Stuart, J. 5 Ind. 193. Reversed.

—Although no price for which the liquor sold was averred, if no notice to quash was made on the trial, it is too late on appeal. *Miles v. The State*, Tippecanoe C. C. P., May term, 1854. 5 Ind. 239. Affirmed.

—Under the act of 1853 liquor may be sold for sacramental, medicinal, culinary, etc., purposes without a license. *Howard v. The State*, Decatur C. C., Nov. term, 1854. Perkins, J. 5 Ind. 516. Reversed.

—It was erroneous for the court to charge that if the defendant sold on Sunday that might be considered an aggravation of the act. There was a statute for that offense. *Wallace v. The State*, Fulton C. C., Nov. term, 1854. 5 Ind. 555. Reversed.

—An indictment for keeping a tippling house, without license, in a disorderly manner, need not aver the specific acts of disorder, under the law of 1843. *Shilling v. The State*, Franklin C. C., Nov. term, 1854. 5 Ind. 443. Affirmed.

1855. Under the act of 1853 it is not necessary that the place where liquor is sold without license be kept in a disorderly manner, and the information need not describe the precise locality. *Howard v. The State*, Decatur C. C. P., May term, 1855. Gookins, J. 6 Ind. 445. Affirmed.

—The collection of a penalty for violating the city ordinance of the city of Richmond relating to the sale of intoxicating liquors is no bar to a prosecution by the state for selling without license. *Levy v. The State*, Wayne C. C. P., May term, 1855. Gookins, J. 6 Ind. 231. Affirmed.

—The jurisdiction of a city, under the law of 1848, relating to the sale of liquors is distinct from that of the state, and does not abrogate the law of the state within the city; hence a city penalty does not bar the state from prosecution. *Ambrose v. The State, Jefferson C. C., May term, 1855. Stuart, J. 6 Ind. 351. Affirmed.*

—An indictment that does not allege the price is bad. *Segur v. The State, Bartholomew C. C., May term, 1855. Davison, J. 6 Ind. 451. Reversed.*

—The act of 1853 repealed the law which forbid the selling of liquor to minors. *Hanning v. The State, Posey C. C. P., May term, 1855. Stuart, J. 6 Ind. 433. Reversed.*

—Same question, same decision. *Brauer v. The State, Posey C. C. P., May term, 1855. 6 Ind. 433. Reversed.*

—Same question, same decision. *Bradley v. The State, Posey C. C. P. 6 Ind., 433. Reversed.*

—Beebe had been imprisoned by the Mayor of Indianapolis for manufacturing and for selling, in violation of the prohibitory law of 1855, and a writ of habeas corpus was sued out, first before the Marion Court of Common Pleas, which affirmed the law, and an appeal was taken to the Supreme Court. The following are the points made by the several judges:

PERKINS J. The law epitomized is: The trade of manufacturing whisky, etc., shall cease, except for medicine, etc., and the sale shall cease, except to or by the agents appointed by the state. No person shall drink any whisky, etc., except as a medicine. We remark that if the manufacture and sale are proper for any purposes, it is not competent for the state to monopolize the business. It is the duty of the judiciary to secure the people from legislative aggression. The taxing power of the state is unlimited and may be exercised so as to practically prohibit; but such an enactment has none of the features of a prohibitory law, for it is based upon the presumption that the taxed pursuit is to exist and not to cease. Life, liberty and the pursuit of happiness are inalienable rights. The right to acquire and enjoy property is one of these rights, and

extends to the right to manufacture property. A freeman may buy and sell at his pleasure. The legislature can not deprive a single citizen of its property. If it can not say that A B shall not cultivate his farm, can it enact that all farming shall cease? Liquor is property. A distillery is property. The government can not take a single barrel of liquor for public use without paying for it. Can it then annihilate the the entire property in liquors in the state? Under the constitution a debtor shall enjoy the necessary comforts of life. Suppose the property of the debtor to consist entirely in liquor, can the government confiscate it? No law shall impair the obligation of contracts. This law impairs all contracts growing out of that special pursuit. We deny that the legislature can enlarge its powers over property or pursuits by enacting a definition of nuisance that shall cover them. Whatever it has a right by the constitution to prohibit or confiscate it may declare a nuisance, nothing more. The legislature might as well declare the press a nuisance, and then enact that it shall cease to exist. The legislature can not allow a thing to be sold for one purpose and forbid it as to another. It can not allow nails to be sold for building a barn and forbid their use for building a church. Whether a thing is a nuisance or not is a judicial question. The court knows and is capable of judicially asserting the fact that the use of beer, etc., as a beverage, is not necessarily hurtful any more than the use of lemonade or ice cream. The Almighty did not create fists to knock people down with, but they are often put to that use, and still he permits men to be born with fists. The manufacture and sale and use of liquors are not necessarily hurtful, and this the court has a right to inquire judicially into. When a case shall arise as to the power to regulate, without prohibiting, we shall decide according to our best judgment. In our opinion, for the reasons given, the act of 1855 is void.

The above opinion is concurred in by Judge Davison.

STEWART, J. There are two questions before the court, one for manufacturing, the other for selling. The agency feature and the several parts of the law relating to manufacture are unconstitutional. The right to hold and enjoy pri-

vate property is an inalienable right, but not above law. It is held subject to such restraints as "the peace, safety and well-being" of society requires. There is a well marked distinction between transferring private property, without trial, without notice, and without offense, to the state, and an act of municipal regulation having for its object the peace, safety and well-being of society. If the state had appropriated beer to the use of the mayor this would have been an infringement of Beebe's inalienable right, but not so the operation of a municipal law enacted in conformity with the constitution. If the constitution does not meet the necessities of society, either in the protection of individual rights, or the rights of the public, the people can amend the constitution. If the law is merely odious, another legislature can correct it; but it does not follow that the courts should hasten to declare it unconstitutional; it can only chasten its harshness by construction. The judiciary can not perform a legislative act. The subject, necessity, policy and expediency of law are matters of legislation. Courts are not to array their own reason against that of the legislature. We can not declare an act void because it conflicts with our opinion of policy, expediency and justice. The principle of prohibition is not new in Indiana. It has been frequently adopted both incidentally and directly. The prohibiting policy was adopted in 1832, if not earlier. The proviso which puts it in the power of a majority of the freeholders of a township to defeat a license is prohibitory. Thus were the inalienable rights of the people of that township invaded. Yet this court did not declare that law void. In several cases, by repeated acts, from 1842 to 1851, this prohibitory feature was extended, yet this court did not interfere. Under the new constitution, in 1853, this same qualified prohibitory policy was attempted. That act was declared unconstitutional, but not for its prohibitory feature. Under that act, and the decision of this court, the prohibition to retail less than a gallon was complete, if every township should vote "no license." During all this period from 1832 to 1853, there was a standing prohibition, with penalties, except by license; so that the prohibitory policy is distinctly evolved. It was further evolved in the unconditional prohibition, except for

scientific or medicinal purposes, in 1849, as to Dalton, Wayne county, and Posey township, Rush county, and in 1850 as to Plainfield, Hendricks county. Thus the prohibitory principle has been adopted partially as to Indiana, contingently all over the State, and directly in certain localities, and the courts endorsed and the executive enforced these laws. Such was the state of the question when the late constitutional convention assembled. There was before that convention a proposition to the effect that the State should not collect revenue from the traffic by licensing it. That was the whole extent of the proposition, and it was voted down. What was the effect of this vote? To leave the question where it found it. It checked the local laws, but silently acquiesced in the principle; so that the state of the question when the constitution was adopted favored prohibition. It is too plain for argument that a law which prohibits a quart or a gallon is inconsistent with that right of property which it is claimed is secured by the constitution. A gallon law is as much an invasion of such a right as a ten or fifty gallon law. So long as those who advocate the liquor traffic deny the right of the legislature to interfere, in any degree, they are consistent. Abstractly free traffic in liquor is as much a right as free traffic in flour. But if it is admitted that it may be regulated or restrained, in any degree, the whole point in controversy is conceded, and the legislature may prohibit altogether. A government which has not power to protect itself against such evils as flow from the liquor traffic is not worth preserving, and this question will continue to agitate the public until it is definitely settled at the ballot-box. This opinion does not cover the search and seizure clause of the law, but is confined wholly to the power to restrain the sale and use; but so much of the law as relates to the manufacture and the agency is unconstitutional; therefore Beebe should be discharged on that count, but the conviction for selling is right, but the record and return being defective, it should, for that reason only, be reversed.

GOOKINS, J. If, as it is assumed, the state has no right to manufacture and sell, still the prohibitory part of the act is in force, as to Beebe, and he has no right to manufacture or

sell. But this assumption is false. The provisions of the act plainly concede the right to manufacture and sell for certain purposes, and provides for them while restraining for the purposes of tippling and to prevent drunkenness. This court may not declare that the evils of drunkenness do not exist. The bill of rights declares that governments are instituted for the peace, safety and well-being of the people. It is the duty of the legislature, not this court, to provide for this. The duty of comparing the statute with the constitution is a delicate one and should be approached with great caution. But we are asked to overleap our constitutional barrier and to invade the province of the legislature. Revolution and anarchy must follow if we do. I can not consent to take this step. Who is to judge whether liquors are such property as the constitution protects? By the decision of this court, Fourth Indiana, page 264, this is referred to the legislature; therefore property may be justly seized and forfeited, and be either sold for public use or destroyed. Gambling apparatus and obscene books are property, as much so as liquors, yet they have been outlawed. Has this court a right to declare the act invalid which declares liquors a nuisance when owned contrary to law? Do we know better than the legislature that they are harmless? Such a conclusion would involve the absurdity that we know to be false what the rest of mankind know to be true. This law is not a sumptuary law. It lays no restraint on expenses, it merely regulates commerce. If it must be set aside because it interferes with the pursuit of happiness, then our laws against bigamy should be; in short, all the inhibitions of the criminal code should be. The laws of Indiana have always prohibited sale to minors and drunken persons. The incipient drunkard needs protection as much as the confirmed drunkard, or the minor, or the Indian. We have always prohibited the trade in small quantities. It is absurd to say that a man has an "inalienable right" to traffic in large quantities and not in small quantities. If the power to regulate be admitted, that of prohibition follows. So far as the case before the court brings the different parts of the law before us, the law is constitutional and the judgment of the Court of Common Pleas ought to be

confirmed. *Beebe v. The State*, Marion C. C. P., Nov. term, 1855. 6 Ind. 501.

—Though the evidence showed that the liquor was purchased for medicinal purposes, it does not show that it was sold for such a purpose. The defendant was therefore rightly convicted under the act of 1853. *Leppert v. The State*, Tippecanoe C. C., Nov. term, 1855. *Perkins*, J. 7 Ind. 300. Affirmed.

—If the affidavit and information under act of 1853 allege the defendant sold by a less quantity than a gallon, for a given sum, and that the liquor was not for medicinal, etc., purposes, the averment contains all that is necessary and the indictment should not have been quashed. *The State v. Leppert*, Tippecanoe C. C. P., Nov. term, 1855. 7 Ind. 355. Reversed.

1856. An information under the first section of the act of 1853 must aver that the liquor was not sold for medicinal, etc., purposes. *Peterson v. The State*, Perry C. C., May term, 1856. *Davison*, J. 7 Ind. 560. Reversed.

—An action under the liquor law of 1853, instituted June 1, 1855, is not affected by the act of 1855, which did not take effect before June 12, 1855. *Leyner v. The State*, Wayne C. C. P., Nov. term, 1856. *Stuart*, J. 8 Ind. 490. Affirmed.

1857. The law of 1855 did not repeal the provisions of the law of 1853 touching license and bond. The damages, \$1,000, are higher than this court would have assessed, but the jury had a right to assess exemplary damages. *Cassett v. The State*, Wayne C. C., May term, 1857. Per Curiam. 9 Ind. 87. Affirmed.

—The term "avocation," in the Sabbath act of 1855, embraces the selling of liquors. A single act is a violation of law. *Voglesong v. The State*, Dearborn C. C. P., May term, 1857. *Perkins*, J. 9 Ind. 113. Affirmed.

—The law of 1855 is, by a majority of the present court, pronounced unconstitutional. *O'Daily v. The State*, Tippecanoe C. C. P., Nov. term, 1857. 9 Ind. 494. Reversed.

—Porter v. The State, Tippecanoe C. C. P. The same.

—Longnesser v. The State, Spencer C. C. P. The same.

—The information did not aver that the liquor sold was not for medicinal, etc., purposes, and was therefore bad. This court having ruled, in the Beebe case, that the agency portion of the law of 1855 is unconstitutional, any person has a right to sell for the purposes specified in the exceptions to the statute. See 4 Ind. 601. Kinser v. The State, Tippecanoe C. C. P., Nov. term, 1857. Perkins, J. 9 Ind. 543. Reversed.

1858. A party may rescind a contract if made while he is so drunk as to be unfit for business. The question whether he was so drunk is a question of fact for the jury. Cummings v. Henry, Cass C. C. P., May term, 1858. Hanna, J. 10 Ind. 109.

—O'Daily v. The State, Tippecanoe C. C. P., Nov. term, 1857. Same as 9 Ind. 494; 10 Ind. 26. Reversed.

—Turner v. The State, Spencer C. C. P. Same question as above, and decided as in 9 Ind. 494; 10 Ind. 60. Reversed.

—If the information was under the law of 1855, it should have been quashed, for that law was unconstitutional. If under the law of 1853, it should have been quashed because it does not negative a license. Howe v. The State, Hamilton C. C. P., May term, 1858. 10 Ind. 423. Reversed.

—O'Daily v. The State. Two cases, same as 9 Ind. 494. Tippecanoe C. C. P., May term, 1858. 10 Ind. 572. Reversed.

—Dauphin v. The State. Two cases, same as above. Tippecanoe C. C. P. 10 Ind. 572. Reversed.

—Shank v. The State, Lagrange C. C. P. Same question. 10 Ind. 572. Reversed.

—Griffin v. The State, Tippecanoe C. C. P. Same. 10 Ind. 572. Reversed.

—Dell v. The State, Tippecanoe C. C. P. Same. 10 Ind. 572. Reversed.

—Redin v. The State, Tippecanoe C. C. P. Same. 10 Ind. 572. Reversed.

—*Hernberger v. The State*, Jennings C. C. P. Same. 10 Ind. 572. Reversed.

—At common law the sale of liquor is not unlawful, nor is the seller liable for any improper use of the article sold, unless he sell it with a knowledge that it is to be used improperly. Under the statute of 1853, supposing it to be in force, the unlawful sale of liquor would subject the seller to a criminal prosecution, and not to damages in a civil action. The complaint, in this case, alleges unlawful sale, and seeks civil damages, and does not claim damages under the damage section of the act. This is wrong. *Struble v. Nodwift*, Warren C. C. P., Nov. term, 1858. Perkins, J. 11 Ind. 64. Reversed.

—Defendant was indicted under the act of 1853 for selling without license, and convicted. This can not be sustained. The law of 1855 expressly repeals the law of 1853. In sustaining the license feature of the law of 1853, after declaring void the election feature, the court probably strained a principle that the state might not be left without some regulation of the liquor traffic. The law of 1853 was not annulled by the Beebe decision, because on that point the court was equally divided; hence that portion was left in force by the same principle that had continued the application of the act of 1853, noticed above. The law of 1855 was not annulled until a new court came upon the bench [Jan. 1, 1879] and unanimously pronounced it void in the case of *Howe v. The State*, 10 Ind. 423. The law of 1853 has been all this time repealed. Though the entire act of 1855 is null, it can not be justly held that the law of 1853 is in force. *Ingersoll v. The State*, Sullivan C. C. P., Nov. term, 1858. Perkins, J. 11 Ind. 464. Reversed.

NOTE. Though this case is placed among the Nov. 1858, cases, it was rendered Jan. 10, 1859, by the new court.

—*Meshmeier v. The State*, Wayne C. C. P.

—*Lamb v. the State*, Kosciusko C. C. P.

—*Hyland v. The State*, Spencer C. C. P.

—*Leyner v. The State*, Wayne C. C. P.

—*Harney v. The State*, Orange C. C. P.

—Sterling v. The State, Kosciusko C. C. P.

—Zelt v. The State, Hamilton C. C. P.

—Shubert v. The State, Jennings C. C. P.

—The State v. Monroe, Scott C. C. P.

These were all prosecutions for violating the law of 1853. Held, that the decision in the case of Maze v. The State, holding that the license feature of the law of 1853 is in force, is overruled, Davison dissenting. Held, that the law of 1855 repealed the law of 1853, notwithstanding the law of 1855 is wholly unconstitutional. Hanna dissenting, holding that an unconstitutional statute can not repeal a former statute.

—Sowle v. The State, Steuben C. C. P.

—Balf v. The State, Tippecanoe C. C. P.

—Bigler v. The State, Steuben C. C. P.

—Connell v. The State, Switzerland C. C. P.

These were all for violating the law of 1855, which had been held unconstitutional. Nov. term, 1858. 11 Ind. 491. Reversed.

—A suit on a forfeited recognizance given under the law of 1853 can not be maintained after that law was repealed. Gasper v. The State, Jennings C. C. P., Nov. term, 1858. Hanna, J. 11 Ind. 548. Reversed.

—Indictment did not state the quantity of liquor sold, nor the price. Motion to quash should have been sustained. Hubbard v. The State, Bartholomew C. C., Nov. term, 1858. 11 Ind. 554. Reversed.

—A town ordinance declaring the sale of intoxicating liquors, beer, etc., to be a nuisance, and prescribing punishment therefor, is invalid. Hollenbaugh v. The State, Gibson C. C. P., Nov. term, 1858. 11 Ind. 556, two cases. Reversed.

1859. A note given for liquors in 1856 is valid. The sale was not unlawful. Holmes v. Ebersole, Huntington C. C. P., May term, 1859. Perkins, J. 12 Ind. 392. Reversed.

—The same question decided the same way, “because it has been determined that there was no law in force in Indiana in 1856 prohibiting or regulating the sale of intoxicating liquors.” *Holmes v. Welch*, Huntington C. C. P., May term, 1859. 12 Ind. 555. Reversed.

1860. The offense of selling to a minor is the sale to a minor not believing him to be an adult. The defendant may show that he was a stranger and that he had the appearance of being an adult, or if known that he was treated by his parents and the community as an adult. *The State v. Kalb*, Gibson C. C. P., May term, 1860. Perkins, J. 14 Ind. 403. Affirmed.

—The indictment for giving liquors to a minor was quashed because the word giving does not appear in the title of the act of 1859. Held, that the section of the act prohibiting giving, etc., is properly connected with the subject embraced in the title. *The State v. Adamson*, Clay C. C., May term, 1860. Perkins, J. 14 Ind. 296. Reversed.

—If license be denied an applicant who proves his moral character and offers to comply with the requisites of the law, he is entitled to an appeal to the circuit court. *Dunn v. The State*, Elkhart C. C., May term, 1860. Per Curiam. 14 Ind. 122. Reversed.

—Under the law of 1859 a remonstrant has no right to appeal to the court from the decision of the commissioners who find the applicant qualified for license. Any person has a right to remonstrate, but this is only to induce greater scrutiny on the part of the board. The applicant has a right to appeal because he has a pecuniary interest at stake; not so with the man who has merely a social or moral interest. *Drapert v. The State*, Wayne C. C. P., May term, 1860. Perkins, J. 14 Ind. 123. Reversed.

—Though the law of 1859 contains no exceptions for medicinal purposes, the court will make the exception in proper cases. The fee required for a license is not a tax upon the business within the meaning of section 1, article 10, of the constitution, but is a fee incident to a legitimate police

regulation. The defendant may show that he had reason to believe that the person to whom he sold was an adult. The legislature can, as a police regulation, prohibit the sale on Sunday and election and other public days. *Thomasson v. The State*, Floyd C. C., Perkins, J. 15 Ind. 449. Affirmed.

1861. Cities are vested with power to exact a license for retailing intoxicating liquors. *City of Lawrenceburg v. Wuest*, Dearborn C. C., May term, 1861. 16 Ind. 337. Reversed.

—An indictment or information under the law of 1859 need not state the kind of liquor, but must aver it to have been "intoxicating liquor," and on trial it must appear that the liquor was within the definition of the term. *Simpson v. The State*, Gibson C. C., Nov. term, 1861. Worden J. 17 Ind. 444. Affirmed.

—An indictment for selling liquor in a less quantity than a quart must specify the quantity sold, and this is not done with sufficient accuracy where the quantity is charged to have been "two glasses." *Haver v. The State*, White C. C., Nov. term, 1861. Worden, J. 17 Ind. 455. Reversed.

—The act of 1853 being unconstitutional and void, the bonds given in compliance with it were not supported by a legal consideration, but a judgment rendered thereon was not void, but must be regarded as inoperative until reversed by a court of error. *Cassel v. Scott*, Wayne C. C., Nov. term, 1861. Davison, J. 17 Ind. 514. Affirmed.

—The liquor law of 1859 does not give an appeal from the judgment of a justice of the peace in a prosecution for a violation of that law, and as the general law on the subject of appeals from justices in criminal cases only gives an appeal to the common pleas, no appeal will lie to the circuit court from the judgment of a justice for a violation of the liquor law. *Dearth v. The State*, Carroll C. C., Nov. term, 1861. Perkins, J. 17 Ind. 523. Affirmed.

1862. To sustain an information for engaging in common labor on Sunday by selling unlawfully two gills of

spirituous liquors, which were sold by defendant's agent, in his bar-room, it should appear that the defendant was present, or had some knowledge of the selling when it was being done. *Wetzler v. The State*, Ripley C. C. P., May term, 1862. 18 Ind. 35. Reversed.

—An indictment for selling liquor contrary to the law of 1859 need not aver what kind of liquor it was, but the evidence must establish the truth of the averment that it was intoxicating. An application for license and the license, granted, does not shield from punishment unless the fee is paid and the bond filed. *Houser v. The State*, Tippecanoe C. C., May term, 1862. *Hanna*, J. 18 Ind. 106. Reversed.

—In prosecutions for selling without license under the law of 1859, it must appear that the liquor was drank in the defendant's house, out-house, etc. The defendant sold a quart, and the purchasers took it onto grounds not in possession of defendant and drank it. *Compher v. The State*, Henry C. C. P., May term, 1862. *Davison*, J. 18 Ind. 447. Reversed.

—An information charging the sale of whisky without averring that it is intoxicating is good, because the court knows, judicially, that whisky is intoxicating. *Carmon v. The State*, Warren C. C. P., May term, 1862. *Perkins*, J. 18 Ind. 450. Affirmed.

—Two other cases, involving the same question from the same court, decided the same way. 18 Ind. 452.

—In an information for selling without license it is sufficient to describe the liquor as intoxicating. The affidavit charged that the liquor was whisky. That was sufficient. *Fetterer v. The State*, DeKalb C. C. P., May term, 1862. *Perkins*, J. 18 Ind. 388. Affirmed.

—If a man sell less than a quart without license on any day, or if he sell any quantity to a minor or to an intoxicated person, or to be drank about the house, he is punishable under the law of 1859. If he sell on Sunday over a quart, not for medicine and to be taken away, and it is not in his usual avocation, he is punishable before a justice of the peace. 2

G. & H. 645. Any quantity, in his usual avocation on Sunday, he is punishable under the law of 1859. One gill of ale, without license, is a sufficient description. *Sohn v. The State*, Grant C. C., May term, 1862. 18 Ind. 389. Reversed.

—The law of 1859 prescribes no penalty for selling in quantity of a quart or more on Sunday. An indictment for selling without license should charge that the liquor was intoxicating. The defendant sold a quart on Sunday. Other statutes regulate the proceedings for a violation of that day. *The State v. Thomasson*, Warren C. C., Nov. term, 1862. Hanna, J. 19 Ind. 99. Affirmed.

—This court does not judicially know that wine is not intoxicating. The legislature has a right to declare that it is. *Jackson v. The State*, Grant C. C., Nov. term, 1862. Hanna, J. 19 Ind. 312. Reversed.

1863. An indictment for selling liquor without license need not state the kind of liquor, but should aver that it was intoxicating, and the evidence must show that it is. *Carpenter v. The State*, Steuben C. C., May term, 1863. 20 Ind. 282.

—An indictment for selling to a minor under the act of 1859 need not state the kind of liquor sold, but must aver that it was intoxicating, and on trial it must appear that the liquor was within the definition of the term in that act. *Downey v. The State*, Steuben C. C., May term, 1863. 20 Ind. 37. Affirmed.

—Three other cases between the same parties, involving the same question, decided the same way. 20 Ind. 37. Affirmed.

—In an indictment for selling without license, it is sufficient to allege generally that the defendant sold "intoxicating liquors" without stating the particular kind of liquor. *Downey v. The State*, Steuben C. C., May term, 1863. 20 Ind. 82. Affirmed.

—To constitute retailing a crime, it must be done without a license; hence the indictment will be bad which does not aver that the defendant had no license. It need not

specify the kind of liquor, but must aver that it was intoxicating, and it is not necessary to aver that the liquor might have been used as a beverage. *The State v. Carpenter*, Steuben C. C. P., May term, 1863. Perkins, J. 20 Ind. 219. Affirmed.

—A person duly licensed to sell liquors may conduct his business by an agent, and such agent will not be liable to prosecution for selling without license. *Pickens v. The State*, Bartholomew C. C., May term, 1863. Davison, J. 20 Ind. 116. Reversed.

—An information averring that defendant sold one gill of intoxicating liquors, but does not aver that a gill is less than a quart, is not sufficient. We think this more in accordance with criminal pleadings than the ruling in 4 Ind. 407. *Struckman v. The State*, Bartholomew C. C. P., Nov. term, 1863. Worden, J. 21 Ind. 160. Reversed.

—It is wrong in a trial for selling without license to allow the state to prove that in an adjoining room the defendant kept a billiard table. This may have misled the jury as to quantum of punishment. *Sowle v. The State*, Steuben C. C., Nov. term, 1863. 21 Ind. 236. Reversed.

—The law of 1859 prescribes no penalty for selling on Sunday one quart or more. The allegation "sold one pint" is not sufficient, for if he had sold one barrel he would have sold one pint, because a pint is contained in a barrel. *Wood v. The State*, DeKalb C. C. P., Nov. term, 1863. 21 Ind. 276. Reversed.

1864. The fourteenth section of the law of 1859, giving the circuit courts and the courts of common pleas jurisdiction, is unconstitutional, not being named in the title, and is not properly connected with the subject matter of the law. *Lauer v. The State*, Marion C. C., May term, 1864. 22 Ind. 461. Reversed.

—Where a license is refused by the commissioners and an appeal is taken to the court under the law of March 11, 1861, the decision of the court is final, and no appeal lies to

the supreme court. Board of Commissioners of Parke County v. Lease, Vigo C. C. P., May term, 1864. Hanna, J. 22 Ind. 261. Dismissed.

—Under the law of 1859 there is no penalty against a licensed person's selling on Sunday. Even if there were a penalty it could not be enforced by indictment. See Lauer v. The State, 22 Ind. 461. Hingle v. The State, Marion C. C., May term, 1864. 22 Ind. 462. Reversed.

—Section fourteen of the law of 1859 is constitutional, and the decision of Lauer, 22 Ind. 461, is overruled, and the decision of Thomasson v. The State, 15 Ind. 429, is reaffirmed. The indictment charging that it sold one pint but did not aver that that quantity is less than a quart is held good, overruling Struckman v. The State, 21 Ind. 160. Reams v. The State, Tipton C. C. Nov. term, 1864. Gregory, J. 21 Ind. 111.

NOTE. Though this case is reported as in the Nov. term, 1864, it was not made until after the judges who had been elected in 1864 had taken their seats, Jan. 3, 1865, the Nov. term extending to the opening of the May term following.

—It is no answer to a breach of the conditions of a bond given under the fourth section of the act of 1859 that the defendant is liable to a criminal prosecution. The State v. Whitener, Nov. term, 1864. Gregory, J. 23 Ind. 124.

—An information charging the sale of a pint is good without the averment that a pint is less than a quart. The reasoning of the court in the case of Stuckman v. The State, which overruled the case in 4 Ind. 107, is quite technical and would require, in criminal proceedings, the highest degree of certainty known to the law, whereas it requires no greater certainty in criminal than in civil pleadings. Fines and costs are not such debts as are exempt from imprisonment, hence the sentence that the defendant stand committed until fine and cost are paid or replevied is not incorrect, and the opinion in Thomson v. The State, 16 Ind. 516, is overruled. McCool v. The State, Howard C. C. P., Nov. term, 1864. Elliott, J. 23 Ind. 127. Affirmed.

—Three gills, the same being less than a quart, is good, and there was no error in committing the defendant until

fine and costs were paid. See *McCool v. The State*, 23 Ind. 127. *Smith v. The State*, Howard C. C. P., Nov. term, 1864. 23 Ind. 132. Affirmed.

—There was no evidence that the defendant knew that the purchaser was a minor, and as he had the appearance of being of age, the court erred in finding him guilty. *Smith v. The State*, Howard C. C. P., Nov. term, 1864. Gregory J. 23 Ind. 117. Reversed.

1865. Three cases from Marion C. C., *Hingle v. The State*, affirm the constitutionality of section 14 of law of 1859, and hold that courts have jurisdiction. May term, 1865. Frazier, J. 24 Ind. 28. Affirmed.

—The act of 1859 affixes no penalty for sales on Sunday by a person having license, hence, though the license does not extend to Sunday, no prosecution will lie for such sale. *Hingle v. The State*, Marion C. C., May term, 1865. Elliott J. 24 Ind. 35. Reversed.

—In an indictment for retailing without license, it is sufficient to charge that it was intoxicating and that the quantity was less than a quart, without averring the kind or exact quantity of liquor. *The State v. Mondy*, Tippecanoe C. C. May term, 1865. Gregory, J. 24 Ind. 268. Reversed.

—The statute relating to minors was not intended to make the seller criminally liable, where upon the exercise of every reasonable caution he should be imposed upon as to the age of the buyer. *Rineman v. The State*, Marion C. C., May term, 1865. Frazier, J. 24 Ind. 80. Reversed.

—If the defendant claims that the sale to a minor was made in good faith, believing he was an adult, the burden of proof is upon him to show facts which will justify the inference of such a belief; but the jury is the judge whether such proof is satisfactory, and this court will not disturb a verdict where the jury decide that the proof is not satisfactory. *Farbach v. The State*, Marion C. C., May term, 1865. Frazier, J. 24 Ind. 77, two cases. Affirmed.

—In a prosecution for selling to a minor, it is proper to

ask the prosecuting witness, the person to whom the sale was made, if he had not voted, first, to impeach the witness, and secondly, to show that the defendant had reason to believe that he was of age. *Brown v. The State*, Marion C. C., May term, 1865. Elliott, J. 24 Ind. 113. Reversed.

—The court refuses to decide whether a parent can authorize a sale to a minor so as to shield the seller from punishment. In this case it is sought to hold a man responsible for the act of his bar-tender. This can not be done. *Lauer v. The State*, Marion C. C., May term, 1865. Frazier, J. 24 Ind. 131. Reversed.

—An information for maintaining a nuisance and alleging the things done is sufficient, whether under the tenth section of misdemeanor act, or the thirtieth section of the act of 1859. *Huber v. The State*, Hendricks C. C. P., Nov. term, 1865. Elliott, J. 25 Ind. 175. Affirmed.

—An indictment for giving liquor to a minor is good. Giving is an offense under the law. To charge selling and giving is bad, but if the defendant goes into trial under it, a verdict as to the giving will be equivalent to a verdict of not guilty as to the selling. *Simons v. The State*, Jennings C. C., Nov. term, 1865. Frazier, J. 25 Ind. 331. Affirmed.

—It is not in contravention of the policy of legislation in this state for an inhabitant to bind himself upon a sufficient consideration not to engage in the traffic of intoxicating liquors, and the territory embraced in the contract may be co-extensive with the legislative jurisdiction. In this country the action of legislative power has been uniformly to limit, restrict or absolutely prohibit the traffic. Such a bond may be enforced. *Harrison v. Lockhart*, Morgan C. C. P., Nov. term, 1865. Ray, J. 25 Ind. 112. Reversed.

NOTE. This is a long and exhaustive discussion of the right of state to restrict if not to prohibit the traffic, going back to Henry the Third, of England.

1866. Where defendant's mind has been so destroyed by long dissipation as to render him mentally incompetent, he should be acquitted of crime though drunk. *Baily v. The*

State, Wabash C. C., May term, 1866. Ray, J. 26 Ind. 422. Reversed.

—Indirect taxes, imposed in part for the restraint of a particular business, as a license or as a mere police regulation, do not come within the spirit of that clause of the constitution which provides for a uniform assessment of taxes. Bright v. McCullough, Newton C. C., Nov. term, 1866. Elliott, J. 27 Ind. 223. Reversed.

—Until the passage of the law of December 19, 1865, there was no penalty for one having license to sell on Sunday, etc. Parker v. The State, Pike C. C. Gregory, J. 27 Ind. 393. Reversed.

—By law of 1859 the fees derived from licenses were made a part of the school-fund. Fry v. The State, Tippecanoe C. C., Nov. term, 1866. 27 Ind. 348. Reversed.

1867. The circuit court has jurisdiction of an action by the trustees of a town to recover the license fee required by the town and a penalty for selling without license. Redden v. The Town of Covington, Fountain C. C., Nov. term, 1867. Frazier, J. 29 Ind. 118. Affirmed.

1868. The act of 1861, giving the remonstrants a right to appeal from the actions of the commissioners, only declares a right which already existed under the general laws, and the case of Drapert v. The State, 14 Ind. 123, is overruled upon this point. The party appealing must give an appeal-bond. Wright v. Harris, Marion C. C. C., May term, 1868. Frazier, J. 29 Ind. 438. Reversed.

—The proof showed that the defendant sold liquor, not being licensed; that he said to the purchaser that it could not be drank in his store-room. The purchaser opened a door and went into a shed attached and drank it, and returned through the store, leaving the bottles and tumblers there, which had been furnished by the defendant. Held, that that was suffering the liquor to be drank about his premises, though he did not own or rent the shed. Stone v. The State, three cases, Jefferson C. C., Nov. term, 1868. Ray, J. 30 Ind. 115. Reversed.

—An action can be maintained by the state on a bond under the act of 1859 for the breach in keeping a disorderly house. *McGinness v. The State*, Shelby C. C. P., Nov. term, 1868. Gregory, J. 30 Ind. 140. Affirmed.

—The section of the law of 1859 which forbids selling to an intoxicated person after notice not to, applies to unlicensed as well as to licensed persons. *Fitzenrider v. The State*, Jennings C. C. P., Nov. term, 1868. Gregory, J. 30 Ind. 238. Affirmed.

—An appeal by remonstrants, taken within thirty days, suspends the order for granting license. On a trial for selling without license, proof that it was sold at a saloon in which the defendant transacted a retail liquor business by a person who was his servant in conducting that trade, sufficiently connects the accused with the crime. *Molihan v. The State*, Tipton C. C. P., Nov. term, 1868. Gregory, J. 30 Ind. 266. Affirmed.

1869. To make one liable for selling on Sunday, the information must elect whether to prosecute under the Sunday law of 1855 or the liquor law of 1859, and proceed accordingly. *Rissel v. The State*, May term, 1869. Frazier, J. 31 Ind. 64. Reversed.

—The act of 1865 prohibits the sale in any quantity on Sunday by a licensed vendor, and is constitutional. *Schlict v. The State*, Ripley C. C. P., May term, 1869. Elliott, J. 31 Ind. 246. Reversed.

—The phrase "he not then and there having a license to sell in a less quantity than a quart at a time," is sufficient to aver that defendant is unlicensed. The information need not show the particular kind of intoxicating liquor sold, but failing to prove that beer is intoxicating is fatal to the information. *Josephdaffer v. The State*, Hamilton C. C. P., Nov. term, 1869. Elliott, J. 32 Ind. 402. Reversed.

1870. To give liquor in payment of a debt is a sale under the law. *Bescher v. The State*, Wayne C. C., May term, 1870. Gregory, J. 32 Ind. 480. Affirmed.

—Where an appeal is taken from the action of the com-

missioners, a change of venue may be taken as in other civil actions, and the judgment of the court is final. There is no appeal to the supreme court, and a license granted thereunder is good. *The State v. Vierling*, Gibson C. C. P., May term, 1870. Gregory, J. 33 Ind. 99. Affirmed.

—Same question, same answer. 33 Ind. 269.

—A failure to prove by evidence that the "glass of beer" sold was malt beer is fatal. Beer may not be intoxicating. Malt liquors are included in the list of intoxicants by statute. *Weis v. The State*, Jefferson C. C. C., May term, 1870. Elliott, J. 33 Ind. 204. Reversed.

—An indictment for selling liquors on Sunday may be sustained under the law relating to the desecration of the Sabbath. *Eitel v. The State*, Jefferson C. C. C., May term, 1870. Frazier, J. 33 Ind. 201. Affirmed.

—A license can not be made to take effect before the date of its issue. A court judicially recognizes that ale is a malt liquor. To prove that liquor was sold between Christmas and New Year's, last year, sufficiently shows that the sale was within two years. *Wiles v. The State*, Jefferson C. C. C., May term, 1870. Elliott, J. 33 Ind. 206. Affirmed.

—The act of March 11, 1867, amending the act for incorporating towns, is unconstitutional, because it does not set forth the entire section as amended, only the seventh clause thereof; hence the ordinance of the town of Martinsville requiring a license is void. Incorporated towns have no such power. *Town of Martinsville v. Frieze*, Morgan C. C., Nov. term, 1870. Worden, J. 33 Ind. 507.

—It is not a good defense to show that the father authorized the sale to the minor. *The State v. Clotter*, Cass C. C., Nov. term, 1870. Frazier, J. 33 Ind. 409. Reversed.

—Where an appeal has been taken by remonstrant, and the applicant for license has received notice of that fact, the appeal thenceforward suspends the order and the right to sell under such license. *Young v. The State*, Monroe C. C. P., Nov. term, 1870. Downey, J. 34 Ind. 46. Affirmed.

—In an indictment for selling without license in a less quantity than a quart at a time, it need not be charged that the liquor was drank in defendant's house, but it should charge that the offense was committed on a given day. *Clark v. The State*, Decatur C. C., Nov. term, 1870. Worden, J. 34 Ind. 436. Reversed.

1871. In an appeal to the court against the action of the commissioners in granting a license, the papers must show that the remonstrants were inhabitants of the township, and the action of the court is final, and no appeal lies to this court. *Brown v. Porter*, Montgomery C. C., Nov. term, 1871. Worden, J. 37 Ind. 206. Dismissed.

—A license is not transferable, and a promissory note for which such transaction forms a part, is without valid consideration. *Hamilton C. C. P.*, Nov. term, 1871. Worden, J. 38 Ind. 57. Affirmed.

—No appeal lies to the supreme court from the refusal to grant a license. *Mueller v. Mayo*, Tippecanoe C. C. P., Nov. term, 1871. 38 Ind. 227. Dismissed.

1872. An indictment for selling intoxicating liquors need not state the kind of liquor sold. The word "barter" is mere surplusage if the defendant sold. If the offense is for selling less than a quart without license, the allegation that he sold to be drank about the house will not vitiate the indictment. *Leary v. The State*, Hendricks C. C., May term, 1872. Buskirk, J. 39 Ind. 360. Affirmed.

—An indictment for keeping a disorderly house must specify the acts of disorder. *Leary v. The State*, Hendricks C. C., May term, 1872. Buskirk, J. 30 Ind. 544. Reversed.

—In a trial for selling liquor to a minor, the evidence showed that the person who sold the liquor was behind the counter of defendant, acting as barkeeper, but the witness did not know his name; did not know that defendant was about the house; did not know that this man put the money in the drawer or in his own pocket; did not know whether he was agent or employe of defendant. Held, that the evidence is

insufficient to show guilt of defendant beyond a reasonable doubt. *Anderson v. The State*, Parke C. C., May term, 1872. Pettit, J. 39 Ind. 553. Reversed.

—A city may require retail dealers to pay a city license, and the state may, for revenue purposes, impose a license upon particular branches of business, and may confer a similar right upon cities. This fee, as to cities, need not be uniform. A fee of five hundred dollars is not unreasonably or objectionably prohibitory. *Wiley v. City of Franklin*, Johnson C. C., May term, 1872. Worden, J. 39 Ind. 429. Affirmed.

—The trustees of an incorporated town have no authority to pass an ordinance prohibiting the sale of intoxicating liquors within the town limits without a license. *Steinmetz v. Town of Versailles*, Ripley C. C., Nov. term, 1872. Buskirk, J. 40 Ind. 249. Reversed.

—Same question, decided the same way; and the person who has paid such a license may recover the same at law, on alleging that it was extorted and was paid to avoid arrest. *Town of Princeton v. Vierling*, Gibson C. C. P., Nov. term, 1872. Pettit, J. 40 Ind. 340. Affirmed.

—Incorporated towns have no right to demand a license. The 16th section of the liquor law of 1859 does not authorize such a license. *Deutchman v. The town of Charlestown*, Clarke C. C. P., Nov. term, 1872. Worden, J. 40 Ind. 449. Affirmed.

—In the absence of regulations for taking appeal under the law of 1861, the appeal must be taken under the general law. In an action upon a bond a transcript of the proceedings is no part of the complaint, and the party can not recover the profits that he might have made between the time of the appeal and the dismissal thereof, and a license law is not unconstitutional. *Blair v. Kilpatrick*, Daviess C. C., Nov. term, 1872. Downey, J. 40 Ind. 312. Reversed.

—When the proof does not show the sale to a minor to have been made with the knowledge or consent of the defendant, he should be acquitted. A sale may be made on

credit. *Ihrig v. The State*, Howard C. C., Nov. term, 1872. Downey, J. 40 Ind. 422. Reversed.

—A city has power to require a license and to charge for it the sum of three hundred dollars, and to impose penalties for the violation of the ordinance. That a defendant has paid a county license is no defense. The power to exact license-money and to regulate, does not confer the power to prohibit. The act of 1859, together with the act of 1867, relating to incorporating cities, show that the power was to raise revenue not to prohibit, and it is proper to show on trial that the amount exacted is prohibitory. This court held, *Wiley v. Owens*, 39 Ind. 429, that we could not say that as to the city of Franklin a tax of \$500 was unreasonable or contrary to law. It may be prohibitory as to one city and not as to another. That becomes a question of fact. If prohibitory, it is unreasonable and unlawful. *Sweet v. City of Wabash*, Wabash C. C. P., Nov. term, 1872. Buskirk, J. [Downey, J., dissents and holds that the question of the prohibition effect of the license fee is not for the court to determine.] 41 Ind. 7. Reversed.

—That the minor told the defendant that he was of age is not sufficient; or that he had a beard. The burden is upon the defendant to prove that he had good cause to believe that the purchaser was of age. *Goetz v. The State*, Marion C. C. C., Nov. term, 1872. Worden, J. 41 Ind. 162. Affirmed.

1873. The act of Feb. 27, 1873, does not violate the constitution by committing legislative authority to the people, nor by vesting administrative power to the people, nor is it an act local in its nature. The constitution does not require that the operation of laws throughout the state shall be uniform in any other sense than that their operation shall be the same in all parts of the state, under the same circumstances and conditions. *Groesch v. The State*, Marion C. C. C., May term, 1873. Downey, J. 42 Ind. 547. Affirmed.

—Where an information for keeping a disorderly house follows the language of the act of 1879, it is to be treated as coming under that act, and it is not necessary to allege that

the defendant was keeping a licensed house, nor that the liquor sold by defendant created the disturbance, it being sufficient if he suffered the liquor to be sold in his house. *Joseph v. The State*, Hamilton C. C., May term, 1873. Downey, J. 42 Ind. 370. Affirmed.

—A house where tippling and whoring are carried on is not a nuisance unless the public is affected by it, and the indictment must show such facts as establish this consequence. *Mains v. The State*, Noble C. C., May term, 1872. Worden, J. 42 Ind. 327. Reversed.

—The law of 1873 forbids the sale on Sunday, and an indictment for selling on Sunday to be drunk on the premises need not allege that the defendant had no permit. *Lehritter v. The State*, Marion C. C. C., May term, 1873. 42 Ind. 383. Reversed.

—A druggist may sell liquor in less quantities than a quart, for medicinal purposes, under the act of 1859. *Qakes v. The State*, Tippecanoe C. C. C., May term, 1873. Worden, J. 42 Ind. 473. Reversed.

—Persons selling under a license obtained under the act of 1859 are subject to the penalties of the act of 1873, for any violations of the act of 1873 after the latter act went into force. *Lehritter v. The State*, Marion C. C. C., May term, 1873. Downey, J. 42 Ind. 482. Affirmed.

—A bond given, not to sell liquors for a given time in a given place, is not in restraint of trade, and therefore void, but may be enforced. *McAlister v. Howell*, Tipton C. C. P., May term, 1873. Worden, J. 42 Ind. 15. Affirmed.

—Under the act of 1861 there is no appeal from a circuit court to the supreme court. *Turner v. Rehm*, Dearborn C. C., Nov. term, 1873. 43 Ind. 208. Dismissed.

—Under the act of 1859 it is not necessary that any but the applicant sign a petition for license. The question whether proper notice had been given by the applicant can not be inquired into in a prosecution for retailing without li-

cense. *Hornaday v. The State*, Marion C. C. C., Nov. term, 1873. Buskirk, J. 43 Ind. 306. Reversed.

—The act of 1873 contains no provision saving prosecutions pending at the time of its passage, and repeals all laws in conflict with it. A judgment rendered for violating a previous law is without foundation. *Whitehurst v. The State*, Allen C. C. C., Nov. term, 1873. Osborn, J. 43 Ind. 473. Reversed.

—The act of 1873 contains no definition of "intoxicating liquors." The mere naked opinion of a witness that brewers beer is intoxicating, without a knowledge of its effects or of what it is composed, is not sufficient to show that it is intoxicating, and a court will not take judicial notice that beer is intoxicating. *Klare v. The State*, Marion C. C. C., Nov. term, 1873. Osborn, J. 43 Ind. 483. Reversed.

—The offense was committed while the law of 1859 was yet in force. As there was no saving clause in the act of 1873 repealing that law, prosecutions can not be maintained under it. *Mullinix v. The State*, Putnam C. C., Nov. term, 1873. Buskirk, J. 43 Ind. 511. Reversed.

—Under an indictment against a saloon keeper, the defendant is not liable where the sale was made in his absence and without his knowledge and consent, and against his express directions. *O'Leary v. The State*, Marion C. C. C., Nov. term, 1873. Worden, J. 44 Ind. 91. Reversed.

—The legislature has the power to declare a place where intoxicating liquors are sold, contrary to law, a nuisance, and it is neither cruel nor unusual punishment to adjudge the abatement of a nuisance; but the indictment must give the name of the purchaser or allege that it is unknown. *McLaughlin v. The State*, Henry C. C., Nov. term, 1873. Downey, J. 45 Ind. 338. Reversed.

—In a prosecution before a justice of the peace or a mayor under the act of 1873, it is not necessary to state the price for which the liquor was sold, as section 19 of that act describes a form for such prosecutions, and on appeal to the

circuit court the case will be tried on that information. The prosecuting witness drove up in the front of the defendant's store and called for a bottle of beer, and drank it from the bottle, sitting in his buggy. If the beer had been handed in tumblers the presumption would have been that it was intended to be drank there; but this is not necessarily the presumption in this case, and the defendant is not presumed to know that it was to be drank then and there. There was no violation of the law. *O'Connor v. The State, Jasper C. C.*, Nov. term, 1873. *Buskirk, J.* 45 Ind. 347. *Reversed.*

—The evidence showed that the accused sold a bottle of beer, not having a permit under the law of 1873, and that it was taken to a shed fifteen or twenty feet distant and there drank, and that there was no agreement as to where the liquor was to be drank. No law violated. *O'Connor v. The State, Jasper C. C.*, Nov. term, 1873. *Buskirk, J.* 45 Ind. 351. *Reversed.*

—*O'Connor v. The State*, same class of facts as reported page 347, decided same way. Nov. term, 1873. *Buskirk, J.* 45 Ind. 351. *Reversed.*

—On the trial for selling to a person in the habit of becoming intoxicated, under the law of 1873, the state is not bound to prove that the defendant knew that the purchaser was in the habit of becoming intoxicated. The burden of proof is on the defendant to show that he had reason to believe that the purchaser was of sober habits. *Farrell v. The State, Hamilton C. C.*, Nov. term, 1873. *Buskirk, J.* 45 Ind. 371. *Reversed.*

1874. Under the law of 1873 the commissioners act judicially as well as ministerially, hence a mandate can not direct them to issue a license; it can only compel them to consider the case. The applicant had a right to appeal from the decision of the commissioners, and this was his remedy, not to seek a mandate. *Reynolds v. The Commissioners, Tippecanoe C. C.*, May term, 1874. *Downey, J.* 45 Ind. 501. *Affirmed.*

—The proprietor of a saloon is not liable in a criminal

prosecution for the acts of his barkeeper in his absence. *Thompson v. The State*, Marion C. C. C., May term, 1874. Worden, J. 45 Ind. 495. Reversed.

—The evidence must clearly connect the defendant with the sale to a minor, by showing that he sold or directed the sale, or was present assenting to it. *Zeller v. The State*, Montgomery C. C., May term, 1874. Downey, J. 46 Ind. 305. Reversed.

—The words “being intoxicated,” used in the indictment instead of the word “getting,” which is in the statute, does not render the indictment bad, and it is not necessary to name the kind of intoxicating liquor sold. *Connell v. The State*, Fayette C. C., May term, 1874. Pettit, J. 46 Ind. 446. Affirmed.

—A person who has paid a town license without protest, can not recover the money paid, though the town had no right to exact the license fee. *Town of Ligonier, v. Ackerman*, Noble C. C., May term, 1874. Buskirk, J. 46 Ind. 552. Reversed. Pettit, J. dissents.

—Where a former conviction is a defense, the burden of proof is on the defendant that the offense charged and the one on which was a former conviction are the same. *Cooper v. The State*, Marion C. C., May term, 1874. Buskirk, J. 47 Ind. 61. Affirmed.

—On a trial for selling to a person in the habit of getting drunk, the affidavit must allege that the person was in that habit at the time of the sale. Evidence as to his habit within a reasonable time before is admissible as tending to show what his habit was at the time of sale. *Zeizer v. The State*, Jefferson C. C., May term, 1874. Downey, J. 47 Ind. 129. Reversed.

—The subject matter of section 9 of the act of 1873, which provides for punishing drunkards, is not expressed in the title, nor is it properly connected with the subject expressed in the title, and the section is therefore void. *The State v. Young*, Shelby C. C., May term, 1874. Worden, J.

47 Ind. 150. Affirmed. Buskirk, J. and Downey, C. J., dissent. Though not expressed in the title the matter of the section is properly connected with the subject.

—In prosecution for selling to a person in the habit of getting intoxicated, it is not necessary to prove that the defendant knew of such a habit, but his want of knowledge may be shown in defense. *Allison v. The State*, Blackford C. C., May term, 1874. Pettit, J. 47 Ind. 140. Reversed.

—A person holding a license under the law of 1859 was, after taking effect of the law of 1873, liable to prosecution for selling to a person in the habit of getting intoxicated. The license served only as a permit under the new law. *Hedges v. Titus*, Boone C. C., May term, 1874. Downey, J. 47 Ind. 145. Reversed.

—Where a cause, under the act of 1873, originates before a justice of the peace, it is triable in the common pleas, on the affidavit, without an information. In a prosecution for keeping a disorderly house the affidavit should specify the acts done. *Hosea v. The State*, Henry C. C. P., May term, 1874. Buskirk, J. 47 Ind. 180. Reversed.

—An affidavit before a justice is sufficient if the offense is charged, "as the affiant verily believes." Two offenses may be charged in one affidavit and tried together. The evidence must show what kind of liquor was sold, or that it was intoxicating. If prosecuted for selling to a person in the habit of becoming intoxicated, if the purchaser was a stranger and had not the appearance of a habitual drunkard, and was sober at the time, he is entitled to an acquittal. *Deveny v. The State*, Jefferson C. C., May term, 1874. Osborn, J. 47 Ind. 208. Reversed.

—It is not sufficient to aver that the offense was committed "at Noblesville." The information should state what Noblesville. *Deck v. The State*, Hamilton C. C. Worden, J. 47 Ind. 245. Reversed.

—It is not sufficient to aver that the liquor was sold "on or about the 2d day of November, 1873, and said day being Sunday." Time is an essential ingredient, and must be accu-

rately stated. *Effinger v. The State*, Jefferson C. C., May term, 1874. Worden, J. 47 Ind. 235. Reversed.

—A majority of the court, through Judge Osborn, hold that the prohibition of selling on certain days refers to liquors to be drank about the premises, and that an indictment that did not allege that it was to be so drank was defective, and that the prohibition therein does not make any sale unlawful that would be lawful without a permit. All persons who continue to sell under their licenses obtained under the act of 1859 are subject to the penalties of the act of 1873, as if they had a permit under the act of 1873. Downey and Buskirk dissent, and hold that all sales, not by wholesale, are prohibited on those days whether the liquor is to be drank on the premises or not. *Morris v. The State*, Marion C. C. C., Nov. term, 1874. 47 Ind. 503. Reversed.

—By removing from the state a person forfeits his permit under the law of 1873, and he can not sell by an agent. *Kraut v. The State*, Jefferson C. C., Nov. term, 1874. Buskirk, J. 47 Ind. 519. Affirmed.

—An indictment charging sale to A. can not be sustained by proof of a joint sale to A. and B. *Brown v. The State*, Montgomery C. C., Nov. term, 1874. 48 Ind. 33. Reversed.

—When a society or club which meets on Sunday, and has a fund for benevolent purposes, authorizes the treasurer to procure a keg of lager beer on Saturday and have the same in the club room on Sunday, and to deliver a glass to any member of the club, to be drank on the premises, upon his paying five cents into the treasury of the club for the benevolent purposes of the club, such a delivery constitutes a sale by the treasurer within the meaning of the act of 1873. The allegation that no crime was intended is no excuse. *Marmont v. The State*, Marion C. C. C., Nov. term, 1864. Buskirk, J. 48 Ind. 21. Affirmed.

—Unless the defendant knew or had means of knowing that the purchaser was in the habit of getting drunk, he can not be punished under the act of 1873. *Ferrill v. The State*,

Hamilton C. C., Nov. term, 1874. Worden, J. 48 Ind. 118. Reversed.

—It is not necessary, in an indictment for selling to a minor, to allege that the defendant knew him to be a minor. Ward v. The State, Porter C. C., Nov. term, 1874. Biddle, J. 48 Ind. 289. Affirmed.

—An indictment must aver that the liquor sold is intoxicating. Ward v. The State, Porter C. C., Nov. term, 1874. Biddle, J. 48 Ind. 293. Reversed.

—An indictment must give the name of the person to whom sold, or aver that it is unknown. Ward v. The State, Porter C. C., Nov. term, 1874. Downey, J. 48 Ind. 294. Reversed.

—It is not necessary in an indictment for selling to a minor to allege that the defendant knew he was a minor. Ward v. The State, Porter C. C. Six cases. Biddle, J. 48 Ind. 294. Affirmed.

—The proceedings of a board of commissioners are presumed to be correct until the contrary is shown. Ward v. The State, Porter C. C., Nov. term 1874. Two cases. Biddle, J. 48 Ind. 295. Affirmed.

—Same question. Same decision. Ward v. The State. Biddle, J. 48 Ind. 295. Affirmed.

—The offense of giving liquor to a minor as defined in the act of 1873, is sufficiently set forth in the title. An indictment for giving to a habitual drunkard can not be sustained if the defendant had reason to believe him a man of sober habits. Williams v. The State, Nov. term, 1874. Buskirk, J. 48 Ind. 306. Reversed.

—To aver that "the liquor was intoxicating" is equivalent to saying "it was intoxicating liquor." Hammond v. The State, Elkhart C. C., Nov. term, 1874. Downey, J. 48 Ind. 393. Reversed.

—A sale of intoxicating liquor, without a permit, at any hour, when the liquor is drank about the premises, is an of-

fense under the law of 1873. The name of the person to whom the liquor is sold is a part of the description of the offense, and must be strictly proved. If the defendant was neither present at nor approved of the sale, he can not be found guilty. *Wreidt v. The State*, Marion C. C. C., Nov. term, 1874. Biddle, J. 48 Ind. 579. Reversed. Downey, J., dissents. The defendant was present when witness went in, and there is no evidence that he left. Why was he keeping a saloon, unless to sell liquor? Why was he there? Why did he have a young man behind the counter? Why was the gin there for sale? The young man was not carrying on business on his own account. The facts proved, and the inferences properly deducible, show that according to the uniform rule of this court in deciding upon the sufficiency of testimony, the judgment should not be disturbed.

—To aver that the liquor was sold without a permit under the law of 1873, to be drank on the premises where sold, and was there drank, it is sufficiently certain and particular to aver that the liquor was sold in Putnam county. *Werneke v. The State*, Putnam C. C., Nov. term, 1874. Downey, J. 49 Ind. 202. Affirmed.

—It is erroneous for the circuit judge to charge a jury that is trying a case under the law of 1873, on an indictment found April 24, 1874, which alleges that the unlawful sale to a minor was on April 1, 1874, that if they found that the sale was made within two years prior to April 24, 1874, they should convict; for the law of 1873 had not been in force two years. *Hurney v. The State*, Elkhart C. C., Nov. term, 1874. Pettit, J. 49 Ind. 203. Reversed.

—To sell on Sunday and other excepted days is no offense under the act of 1873, unless it is to be drank on the premises. *Beardsley v. The State*, Elkhart C. C., Nov. term, 1874. Biddle, J. 49 Ind. 240. Reversed. Downey, J. and Buskirk, J. dissent, and hold that all sales on the prohibited days are unlawful.

—In a prosecution under the law of 1873 for selling liquor after 9 o'clock, it is necessary to allege that it was sold

to be drank on the premises. *Layton v. The State*, Putnam C. C., Nov. term, 1874. Downey, J. 49 Ind. 229. Reversed.

—The act of 1873 having repealed all laws theretofore on the subject, and having excepted sales made between the taking effect of the law and the close of the first regular session of the commissioners, there was no law forbidding sale during that period. *The State v. Elff*, Marion C. C., Nov. term, 1874. Worden, J. 49 Ind. 282. Affirmed.

1875. A person need not be intoxicated at the time of sale to render the seller liable under the law of 1873, which forbids selling to persons in the habit of getting intoxicated. In a suit brought by a wife for damages, it is necessary for her to establish the intoxication of her husband, habitual or otherwise; that she has been injured by such intoxication, and that the intoxication was caused in whole or in part by the defendant. All who may have contributed to this intoxication may be joined in the action. Three hundred and twenty-five dollars are not excessive damages. *Fountain v. Draper*, Benton C. C., May term, 1875. Downey, J. 49 Ind. 441. Affirmed.

—Where liquor is sold in ordinary beer glasses, carried from the room and drank on the lot adjoining the premises, and the glasses returned, the liquor is presumed to have been sold to be drank on the premises. The fact that a party was deceived into a violation of the law by a detective is no justification. *Rater v. The State*, Decatur C. C., May term, 1875. Buskirk, J. 49 Ind. 507. Affirmed.

—To recover damages under the act of 1873, it must be averred and shown that the damages were in consequence of the sale of the liquors by the man having the permit, his agent or employe. *Schafer v. The State*, Posey C. C., May term, 1875. Buskirk, J. 49 Ind. 460. Reversed.

—It is not necessary in an indictment under the act of 1873, for selling to be drank on the premises, to allege that the liquor was so drank. When there is an enclosure in the rear of and in view of a saloon where persons can drink under the protection of a high fence, and where men are in the habit of

drinking, and where liquor sold is delivered in vessels and drank from glasses furnished by the seller and carried, when bought, in the direction of the enclosure and the empty vessels are returned, it may be inferred that the liquor was sold to be drank on the premises, though the persons buying were told that it must not be drank on the premises. When one witness testifies that he drank of the liquor, and that in his opinion it was intoxicating and made him drunk, it will justify the finding that it was intoxicating. *Eisenman v. The State*, Decatur C. C., May term, 1875. Downey J. 49 Ind. 511. Affirmed.

—A criminal prosecution may be made before a justice of the peace for selling intoxicating liquors to a person in the habit of getting drunk, in violation of the law of 1873. *The State v. Lawrence*, Hendricks C. C., May term, 1875. Worden, J. 49 Ind. 515. Reversed.

—On an appeal from a justice of the peace to the circuit court, a new arraignment is not necessary. *Eisenman v. The State*, Decatur C. C., May term, 1875. Buskirk, J. 49 Ind. 520. Affirmed.

—An indictment for selling after 9 o'clock, under the law of 1873, need not aver that the defendant had a permit. *Crone v. The State*, Marion C. C. C., May term, 1875. Biddle, Downey and Buskirk, JJ., agree. Worden and Pettit, JJ., dissent. 49 Ind. 538. Affirmed.

—To an indictment for selling without a permit, the penalty is not less than ten dollars, while to an indictment for selling with a permit, but within the interdicted hours, the fine is not less than five dollars. *Taylor v. The State*, Marion C. C. C., May term, 1875. Biddle, J. 40 Ind. 555. Affirmed. Worden and Pettit, JJ. dissent.

—In an indictment under the law of 1873 for selling on Sunday to be drank on the premises, it is not necessary to allege whether the defendant had or had not a permit. *Stein v. The State*, Marion C. C. C., May term, 1875. Pettit, J. 50 Ind. 21. Affirmed.

—In an indictment under the law of 1873, for giving liquor to a minor, it is not necessary to aver whether the defendant had or had not a license. *Meyer v. The State*, Marion C. C. C., May term, 1875. Pettit, J. 50 Ind. 18. Affirmed.

—*Stein v. The State*. The same as in the case of *Stein v. State*, page 21. Pettit, J. 50 Ind. 22.

—In an information under the law of 1873 for selling to a person in the habit of getting drunk, it is not necessary to allege that the defendant had notice of such habit. *Werneke v. The State*, Putnam C. C., May term, 1875. Worden, J. 50 Ind. 22. Affirmed.

—In an indictment for selling to an intoxicated person, it is not necessary to allege that the defendant had notice of the intoxication of said person. *Werneke v. The State*, Putnam C. C., May term, 1875. Worden, J. 50 Ind. 23. Affirmed.

—In an indictment under the first section of the law of 1873, it is necessary to aver that it was sold "to be drank." Charging that the defendant permitted it to be drank, etc., is bad. *Vanderwood v. The State*, Marion C. C. C., May term, 1875. Worden, J. 50 Ind. 26. Reversed.

—Same parties, same question. *Buskirk, J.* 50 Ind. 295. Reversed.

—Same parties, same question. *Downey, J.* 50 Ind. 295. Reversed.

—In an action for damages under the law of 1873, it is no excuse that the person selling is only a clerk or salesman, nor is it necessary that he should compel, or use any artifice to cause the purchaser to drink, or that he should know that such person would get drunk. The part of the law which holds the owner of the real estate liable, etc., refers to owners who rent. In such case the complaint must show that he had knowledge that liquors were sold therein. For a wife to allege that her husband, when drunk, neglects his work and squanders his property, etc., sufficiently shows how she was

injured. *Barnaby v. Wood*, Henry C. C., May term, 1875. Downey, J. 50 Ind. 405. Reversed.

—To sustain a conviction for selling beer, under the act of 1873 the beer must be proved to be intoxicating. *Lathrope v. The State*, Kosciusko C. C., Nov. term, 1875. Pettit, J. 50 Ind. 555. Reversed. Biddle, J., dissents, and holds "that the evidences showed it to be lager beer, and that lager beer is intoxicating is a fact which must be judicially known, without special proof."

—A person who sells intoxicating liquor on a proper occasion, in good faith and with due caution, for medicinal purposes alone, is as much shielded by the spirit of the law of 1873 as if exempted from penalties by express words. *Ball v. The State*, Montgomery C. C., Nov. term, 1875. Biddle, J. 50 Ind. 595. Reversed.

—If a clerk or barkeeper sell liquor without the knowledge, and against the instructions of the proprietor, the latter can not be held criminally liable. *Lathrope v. The State*, Kosciusko C. C., Nov. term, 1875. Worden, J. 51 Ind. 192. Reversed.

—In an action to recover money paid for town license, when no license was required, it must be shown that the payment was involuntary. *Town of Sullivan v. McCammon*, Nov. term, 1875. Worden, J. 51 Ind. 264. Reversed. Pettit, J. dissents.

—In a civil action for damages under the act of 1873, a suit may be maintained by a person prevented from following his usual occupation by being wounded by an intoxicated person, against the man who sold the liquor, and the owner of the premises on which the liquor was sold, and the drunken man need not be made a party. *English v. Beard*, Decatur C. C., Nov. term, 1875. Downey, J. 51 Ind. 489. Affirmed.

—Indictment for selling, under the law of 1875, "without being licensed," is as good as if more accurately following the language of the statute, "without having first procured a license." *The State v. Binkner*, Morgan C. C., Nov. term, 1875. Biddle, J. 52 Ind. 278. Reversed.

1876. A license is not transferable, but a licensee may carry on the business by an agent at the place designated in the license, and the agent will not be liable for selling without license. *Runyon v. The State*, Marion C. C. C., May term, 1876. Buskirk, J. 52 Ind. 320. Reversed.

—A social party, held at the residence of another, is not "a public place" in the meaning of the act of 1875, justifying arrests for drunkenness. *The State v. Sowers*, Parke C. C., May term, 1876. Pettit, J. 52 Ind. 461. Reversed.

—An indictment under the law of 1875, which alleges that the defendant, not being licensed, sold liquor "to be drank on the premises," is not good. It should follow the language of the statute, "to be drank in his house, out-house, yard," etc. *Burke v. The State*, Henry C. C., May term, 1876. Pettit, J. 52 Ind. 311. Affirmed.

—The section of the act of 1873 which makes it unlawful, by himself or agent, to sell or give to a minor, etc., is constitutional. *Allen v. The State*, Kosciusko C. C., May term, 1876. Buskirk, J. 52 Ind. 486. Affirmed.

—An indictment under the law of 1875 for keeping a disorderly house, besides averring that the defendant had a license, should also aver the place to which the license is applicable, and that that place was kept in a disorderly manner. *Davis v. The State*, Fayette C. C., May term, 1876. Biddle, J. 52 Ind., 488. Reversed.

—An indictment for being found drunk in a public street, highway, and sidewalk in a county named, and in the State of Indiana, sufficiently describes a public place, under the act of 1875. *The State v. Waggoner*, Greene C. C., May term, 1876. Buskirk, J. 52 Ind. 481. Reversed.

—It is bad, on motion to quash, to aver that the defendant sold one gill of liquor to be drank upon the premises, the defendant not having license to sell, to be drank on the premises, without alleging that the defendant had no license to sell in less quantity than a quart at a time, and without a more particular designation of the place of drinking. *Burke*

v. The State, Henry C. C., May term, 1876. Buskirk, J. 52 Ind. 522. Reversed.

—An indictment for selling liquor on Sunday, one gill, to be drank on the premises, is not bad, because it avers that the defendant had no license. This is mere surplusage, not duplicity. No license, under the law of 1873, could protect one in such selling. The State v. Hutzell, Allen C. C. C., May term, 1876. Biddle, J. 53 Ind. 160. Reversed.

—An information alleging that the defendant sold, bartered, and gave intoxicating liquor to a habitual drunkard, but not alleging what was paid for it, is not bad. The words "sell, barter," etc., are mere surplusage, and not duplicity. Courts and juries take notice that whisky is intoxicating, and it is not error to charge the jury that proof of selling whisky is proof of selling intoxicating liquor. Eagan v. The State, Jennings C. C., May term, 1876. Biddle, J. 53 Ind. 162. Affirmed.

—In a suit by a wife, under the laws of 1873, for damages sustained by the selling of liquor to her husband, the husband can not be a witness for the wife. So much of sec. 18 as dispenses with certain allegations in prosecutions is unconstitutional, and the phrase "in all cases" refers only to criminal prosecutions. Jackson v. Reeves, Steuben C. C., Nov. term, 1876. Downey, J. 53 Ind. 231. Reversed.

—An appeal, by remonstrants, under the law of 1859, suspended the operations of the order to grant license, and the applicant could not sell lawfully. A seller can not recover at law the price of liquor sold unlawfully. Mulliken v. Davis, Monroe C. C., May term, 1876. Biddle, J. 53 Ind. 206. Reversed.

—The personal appearance of a minor before a jury can not be taken as evidence of his age, in determining whether the defendant acted in good faith in selling to him. Thinger v. The State, Delaware C. C., Nov. term, 1876. Worden, J. 53 Ind. 251. Reversed.

—It is sufficient in an indictment under the laws of 1875,

to allege that the liquor was intoxicating. *State v. Hannam*, Allen C. C. C., Nov. term, 1876. Biddle, J. 53 Ind. 335. Reversed.

—So much of the act of 1873 as provides that any person who should, by sale, cause the intoxication of another, should be liable to pay a compensation for taking care of said intoxicated person, must be construed as applying only to the time that he remained intoxicated. In an action by a widow to recover damages for the death of her husband who was so injured while intoxicated that he died of the injury, it is held, that she was not injured "in consequence of the intoxication" of her husband, and therefore not entitled to recover. Intoxication was not the immediate cause of his death. *Krach v. Heilman*, Vanderburg C. C., Nov. term, 1876. Worden, J. 53 Ind. 517. Reversed.

—Money paid for a town license under an invalid ordinance, if paid without protest, can not be recovered on the discovery that the ordinance is invalid. The town of *Edinburg v. Hackney*, Johnson C. C., Nov. term, 1876. Howk, J. 54 Ind. 83. Reversed.

An indictment for retailing without license, must aver some price for which it was sold, but need not aver the quantity sold more specifically than that it was less than a quart. *The State v. Jacks*, Boone C. C., Nov. term, 1876. Perkins, J. 54 Ind. 412. Affirmed.

—An indictment for selling in less quantity than a quart without license, need not aver that it was to be drank on the premises. To so aver, however, does not render the indictment bad, that being mere surplusage. *The State v. Wickey*, Allen C. C. C., Nov. term, 1876. Perkins, J. 54 Ind. 433. Reversed.

—An indictment for keeping a nuisance, under the act of 1875, which specifies the town lots on which the building is situated, is sufficiently descriptive of the premises. The gist of keeping a nuisance does not consist in selling the liquor, but in keeping a disorderly house. *Fletcher v. The State*,

Clinton C. C., Nov. term, 1876. Biddle, J. 54 Ind. 462. Reversed.

—A death from being run over by a train while intoxicated, is not such a natural, necessary or probable result of unlawful sale as specified by the act of 1873, as to entitle the widow to recover damages. *Collier v. Early*, Boone C. C., Nov. term, 1876. Biddle, J. 54 Ind. 559. Reversed.

—In an action to recover money paid to a town for license on a void ordinance, the averment that the payment was made to avoid penalty, etc., does not sufficiently show that the payment was involuntary, and is bad on demurrer for want of sufficient facts. *The Town of Brazil v. Kress*, Clay C. C., Nov. term, 1876. Hawk, J. 55 Ind. 14. Reversed.

—Where a person, holding a permit under the law of 1873, improperly sold to a man who was in the habit of becoming intoxicated, and he fails to provide for his wife, but abuses her, she could maintain an action for damages against such person and his security. Unless the evidence show what kind of beer was sold, or that it was intoxicating, she can not recover. *Schlosser v. The State*, Miami C. C., Nov. term, 1876. Biddle, J. 55 Ind. 82. Reversed.

—Under the act of 1873, a widow has no cause of action against the person who unlawfully sold liquor to her husband, if his death was the result of injuries received by a fall while intoxicated. *Backer v. Dant*, Daviess C. C., Nov. term, 1876. Worden, J. 55 Ind. 181. Reversed.

—If a retailer, applying for a renewal of his license, pay a printer for inserting his notice of application, and if on account of a failure to so insert the dealer is prevented from a renewal of his license, and his house is shut up in consequence for a time, the dealer has a cause of action for the recovery of the money paid, and for damages resulting from a closing of his house. *Glass v. Garber*, Jefferson C. C., Nov. term, 1876. 55 Ind. 336. Reversed.

1877. In an action for damages under the law of 1873, it is not sufficient to aver that the defendant sold, etc., which

the person drank, etc., and that he thereby became "in whole or in part intoxicated." The allegation should show that the defendant had "caused" such intoxication. *Ditton v. Morgan*, Huntington C. C., May term, 1877. Worden, J. 56 Ind. 60. Reversed.

—A conviction upon an indictment without evidence that the sale was made, is erroneous. *Long v. The State*, Morgan C. C., May term, 1877. Perkins, J. 56 Ind. 117. Reversed.

—An indictment for selling unlawfully need not describe the kind of liquor sold. A sale for medicinal purposes is not forbidden by the act of 1875. *Hooper v. The State*, Monroe C. C., May term, 1877. Howk, J. 56 Ind. 153. Reversed.

—Where the evidence discloses several violations of law within the time covered by the indictment, it is not error in the court to refuse to instruct the jury that the evidence must show the defendant to have committed the offense charged at a particular time and on a particular occasion; but it is a sufficient cause for remanding for a new trial, that the state, in the argument, commented on the refusal of the defendant to testify. *Long v. The State*, Morgan C. C., May term, 1877. Niblack, J. 56 Ind. 182. Reversed.

—An indictment for selling "malt liquor" under the act of 1875, is not sufficient, for the courts of this state can not judicially say that all malt liquors are intoxicating. A license may be granted to two or more persons jointly, but a license to one member of a firm will not authorize the other members to sell. They are not agents of the licensee. *Shaw v. The State*, Wayne C. C., May term, 1877. Howk, J. 56 Ind. 188. Affirmed.

—To warrant a conviction, the evidence must be sufficiently definite as to time to show that the prosecution is not barred by limitation. *Buckner v. The State*, Morgan C. C., May term, 1877. Worden, J. 56 Ind. 207. Reversed.

—The evidence must show when the sale was made. *Long v. The State*, Morgan C. C., May term, 1877. Worden, J. 56 Ind. 206. Reversed.

—The phrase, “for any purpose of gain,” does not modify the words “sell” or “barter,” used in another part of the act of 1875, and it need not be averred in an indictment for selling or bartering. The courts of this state take judicial notice that whisky is an intoxicating liquor, and to prove the sale of whisky is sufficient under an indictment for selling intoxicating liquor. *Schlict v. The State*, Ripley C. C., May term, 1877. Howk, J. 56 Ind. 173. Affirmed.

—In an action by a wife, under the law of 1873, for damages suffered in her means of support, caused by the defendant, her anxiety of mind, mortification, sorrow, and loss of her husband’s society, can not enter into the measure of damages. Where the intoxication was caused by such unlawful sale as to render the seller liable under the penal clauses of the law, exemplary damages can not be assessed, and so much of the law as provides for such damages for unlawful selling is unconstitutional. *Koerner v. The State*, Marion C. C., May term, 1877. Worden, J. 56 Ind. 284. Reversed.

—In an action by a wife for damages, under the law of 1873, the complaint need not aver the kind of liquor sold, nor that the defendant had no license, nor that the liquors were sold to be drunk on the premises, nor that the husband was intoxicated, or in the habit of becoming so, at the time of such sale. *Walser v. Kerrigan*, Dearborn C. C., May term, 1877. Perkins, J. 56 Ind. 301. Affirmed.

—The law of 1875 is not unconstitutional. The subject matter is sufficiently contained in the title. *O’Dea v. The State*, Hendricks C. C., May term, 1877. Biddle, J. 57 Ind. 31. Affirmed.

—A person having no license, who sells a quart and measures it out, is not liable for a prosecution, though the purchaser take away less than the quart and leave the remainder so separated and subject to future order. *Dobson v. The State*, Madison C. C., May term, 1877. Worden, J. 57 Ind. 69. Reversed.

—In an indictment for selling to a minor, it is sufficient to allege that the person then and there was under the age of

twenty-one, to aver that he was a minor. *Brinkman v. The State*, Decatur C. C., May term, 1877. Perkins, J. 57 Ind. 76. Reversed.

—The provision of the act of 1873, which relates to the right of action by any one injured, against the person causing the intoxication is constitutional; and all persons who take a permit under the act, take it subject to all the restrictions imposed by the act. *Horning v. Wendell*, Jefferson C. C., May term, 1877. Worden, J. 57 Ind. 171. Affirmed.

—In an action for damages by a wife, under the section of the law of 1875 which says that any person who shall sustain injury, etc., shall have right of action, a wife may sue without being joined with her husband. But such acts may be maintained only when the sale is made in violation of the statute. *Mitchell v. Ratts*, Washington C. C., May term, 1877. Biddle, J. 57 Ind. 259. Reversed.

—On an appeal from the decision of the commissioners by the applicant, the circuit court may grant a license. The averment that the defendant had not procured a license from the commissioners, does not sufficiently negative his having a license. *Meier v. The State*, Randolph C. C., Nov. term, 1877. Perkins, J. 57 Ind. 386. Reversed.

—Whether or not an unlawful sale of liquor made by the applicant, is such an immorality or unfitness as should defeat his application, is a question for the jury to determine, and the decision should not be interfered with by an affirmative instruction of the court. A sale of intoxicating liquor in a less quantity than a quart without a license, is not necessarily unlawful. *Keiser v. Lines*, Henry C. C., Nov. term, 1877. Biddle, J. 57 Ind. 431. Reversed.

—An indictment which charges a sale in a less quantity than a quart, "to be then and there drank," not being then and there licensed according to the laws of Indiana, is not bad for duplicity, and sufficiently avers that the defendant was not licensed to sell intoxicating liquors. *The State v. Wickey*, Allen C. C. C., Nov. term, 1877. Hawk, J. 57 Ind. 596. Reversed.

—A justice of the peace has jurisdiction in cases of selling without license in less quantity than a quart, to be drank on the premises. The prosecuting attorney may dismiss as to one or more and prosecute as to the rest, where two or more have been joined. *The State v. Woulfe*, Allen C. C. C., Nov. term, 1877. Niblack, J. 58 Ind. 17. Reversed.

—If an applicant has complied with the statute, is an inhabitant of the place, over the age of twenty-one, not unfit on account of immorality, and is not in the habit of becoming intoxicated, he is entitled to a license under the law of 1875. *Miller v. Wade*, Lagrange C. C., Nov. term, 1877. Biddle, J. 58 Ind. 91. Reversed.

—An indictment for selling to a minor, under the 13th section of the act of 1875 is defective if not stating the quantity sold. *Manville v. The State*, Delaware C. C., Nov. term, 1877. 58 Ind. 63. Reversed.

—An indictment for keeping a disorderly house in June 1st, 1875, could not be maintained because the act of 1875, under which the indictment was found, did not take effect so as to punish offenses until after the meeting of the June board of that year. *Collins v. The State*, Fayette C. C., Nov. term, 1877. 58 Ind. 5. Reversed.

—The action authorized by the bonds given under the law of 1873 was merely personal, and two or more bonds could not be tried at the same time. *Baker v. McCoy*, Clay C. C., Nov. term, 1877. Howk, J. 58 Ind. 215. Reversed.

—The act of March 5, 1877, repeals the section of the act of 1875 which relates to selling on Sunday, etc. Under it the liquor must be sold to be drank as a beverage. *Dowdell v. The State*, Knox C. C., Nov. term, 1877. Howk, J. 58 Ind. 333. Reversed.

—A person not having a license may make such a contract with one who has as to transact the ordinary business of a saloon in the name of the licensee, as his agent, without being liable to the penalties of selling without license. *Keiser*

v. The State, Henry C. C., Nov. term, 1877. Worden J. 58 Ind. 379. Reversed.

—In a suit for damages under the law of 1873, it is not equivalent to saying that the injury was sustained “in consequence of the intoxication,” to aver that “while in a state of intoxication he fell into an open cellar, etc.” *Schwarm v Osborn*, Tippecanoe C. C., Nov. term, 1877. Biddle, J. 59 Ind. 245. Reversed.

—The title of the act of 1875 sufficiently includes the section which relates to public drunkenness. As to whether a man is drunk or not rests upon the evidence, and it is a matter about which witnesses are liable to differ, but that can not invalidate the law. *Evans v. The State*, *Hendricks C. C.*, Niblack, J. 59 Ind. 563. Affirmed.

1878. An indictment alleging that the defendant sold “without being licensed by the board of commissioners, etc,” is not sufficient to bring the indictment within the statute of 1875. *Henderson v. The State*, *Hamilton C. C.*, May term, 1878. Niblack, J. 60 Ind. 296. Reversed.

—Appeal to the supreme court by the state, can be taken only on questions of law, not on questions of fact. *State v. Van Valkenburg*, *Pulaski C. C.*, May term, 1878. 60 Ind. 302. Dismissed.

—An indictment alleging that the defendant did sell to a person named one gill of an intoxicating liquor for ten cents, not being licensed according to law to vend intoxicating liquors in a less quantity than a quart at a time, is good. *Coverdale v. The State*, *Hamilton C. C.*, May term, 1878. Perkins, J. 60 Ind. 307. Affirmed.

—The act of March 1, 1877, amending the act of 1855, is unconstitutional and void, because an act that is unconstitutional can not be amended. There is therefore no law authorizing a town to charge for a license. *Cowley v. The Town of Rushville*, *Rush C. C.*, May term, 1878. 60 Ind. 328. Dismissed.

—There is no valid law in the state authorizing a town to

require a license. *Walter v. Columbia City, Whitley C. C.*, May term, 1878. *Howk, J.* 61 Ind. 24. *Reversed.*

—The fact that a man holding a license under the act of 1873, had been convicted of a violation of the law, worked a forfeiture of the license without the aid of any judgment declaring such forfeiture, and rendered him ineligible to another license for four years; but such a conviction under the law of 1873 is no ground for refusing a license under the law of 1875. Any male inhabitant over twenty-one, who is not unfit to be trusted with the business and is not in the habit of becoming intoxicated, is entitled to a license under the act of 1875. *Golden v. Bingham, Elkhart C. C.*, May term, 1878. *Niblack, J.* 61 Ind. 198. *Reversed.*

—Occasional drinking of intoxicants does not constitute such immorality as precludes from a license. Intoxication in the remote past does not. Our laws recognize the right to drink in small quantities; so do the scriptures: "Wine maketh glad the heart of man." "Give strong drink to him that is ready to perish," "and take a little wine for thy stomach's sake." *Calder v. Sheppard, Morgan C. C.*, May term, 1878. *Perkins, J.* 61 Ind. 219. *Reversed.*

—A threat to prosecute for not taking out a town license is not such duress as to make the payment involuntary; hence money paid for a town license can not be recovered. *Colglazier v. The Town of Salem, Washington C. C.*, May term, 1878. *Perkins, J.* 61 Ind. 445. *Affirmed.*

—Towns incorporated under the general law have no authority over liquor selling. *McFee v. Town of Greenfield, Hancock C. C.*, May term, 1878. *Howk, J.* 62 Ind. 21. *Reversed.*

—The act of March 16, 1875, declaring certain days legal holidays for the payment of bills of exchange, etc., does not make them legal holidays within the meaning of the liquor law of 1875. To aver that liquor was sold on or about the fourth of July is not specific enough. *Ruge v. The State, Porter C. C.*, Nov. term, 1878. *Biddle, J.* 62 Ind. 388. *Reversed.*

—In a verdict for damages under the law of 1873 for five hundred dollars, two hundred being for exemplary damages, it is held, that exemplary damages are not lawful, 56 Ind. 484, and that unless the exemplary damages are remitted, the case is reversed. *Schafer v. Smith*, Pike C. C., Nov. term, 1878. Niblack, J. 63 Ind. 226.

—A sale to a minor in an honest belief that he is of age is not a violation of the law, and the court has no right to take into consideration the personal appearance of such minor, as to age. *Robinius v. The State*, Marion C. C. C., Nov. term, 1878. Howk, J. 63 Ind. 235. Reversed.

—"Without then and there having a license from the commissioners" is not sufficient in an indictment. *O'Brien v. The State*, Benton C. C., Nov. term, 1878. Niblack, J. 63 Ind. 242.

—Proof of sale to one "Hairholts," does not sustain an indictment for selling to one "Hairholser." *Mitchell v. The State*, Huntington C. C., Nov. term, 1878. Perkins, J. 63 Ind. 276. Reversed.

—This court can not hold any sale unlawful under the act of 1875, unless it is for a less quantity than a quart, whether made to a habitual drunkard or any other person; hence the indictment must allege the sale of a less quantity than a quart. *The State v. Zeitler*, Elkhart C. C., Nov. term, 1878. Biddle, J. 63 Ind. 441. Affirmed.

—Whether a sale is made for medicinal purposes or not is a question for the jury to determine. *Mitchell v. The State*, Huntington C. C., Nov. term, 1878. Perkins, J. 63 Ind. 574. Reversed.

—If a person make proper application and a license is granted and the proper bond is filed, yet the money is not paid until subsequent to a sale but before a prosecution is begun, and the sale was made within the period covered by the license, the payment of the license fee and the issuing of the license shields from prosecution. *Vannoy v. The State*,

Shelby C. C., Nov. term, 1878. Howk, J. 64 Ind. 474. Reversed. Niblack, J., dissents.

1879. If a sale be made to a minor in good faith, believing that he is twenty-one, and if the minor says that he is twenty-one, the court may not charge the jury to inquire whether that was before or after the sale, unless there has been testimony on this question. *Moore v. The State*, Henry C. C., May term, 1879. Worden, J. 65 Ind. 382. Reversed.

—An indictment for selling without license must allege that the defendant had no license when the sale was made, though she need not prove it. Proof of a barter or gift will not support the allegation of sale. A sale on credit will support the indictment. A sale by defendant or by his agent must be proved to justify conviction. *Stevenson v. The State*, Fountain C. C., May term, 1879. Perkins, J. 65 Ind. 409. Reversed.

—The law of 1875 does not require the applicant to be a resident of the town, township or county where the liquor is to be sold. It requires only that he be a male inhabitant of the State. *Laboyteaux v. The State*, Wayne C. C., May term, 1875. Niblack, J. 65 Ind. 545. Reversed.

—Appeal to supreme court must be taken within one year from date of judgment. *McLaughlin v. The State*, Henry C. C., May term, 1879. Niblack, J. 66 Ind. 193. Dismissed.

—License under the law of 1875 can be granted for only one year at a time. Where the proper officers receive the applicant's money and issue his license, after the date of the license, he can not be prosecuted thereafter for any sale made between the date of the granting and the date of issuing. *The State v. Wilcox*, Marion C. C., May term, 1879. Howk, J. 66 Ind. 557. Reversed. Niblack, J., dissents.

—If a person who has a grudge against a liquor seller, induces a minor to buy for the purpose of indicting the seller, and he unwittingly fall into the trap, and if the sale is made when the defendant and bar-keeper are very much hurried

this court will order the judgment below reversed. *Robinius v. The State*, Marion C. C. C., May term, 1879. Worden, J. 67 Ind. 94. Reversed.

—It is not necessary in an indictment for selling to a drunken man, to aver that the defendant then and there knew him to be drunk. *Berry v. The State*, Porter C. C., Nov. term, 1879. Howk, J. 67 Ind. 222. Affirmed.

—An indictment for selling to a minor is bad in saying sold "one gill," unless it allege that the sale was of a less quantity than a quart. *Arbintrode v. The State*, Huntington C. C., Nov. term, 1879. Worden, J. 67 Ind. 267. Reversed.

—A juror who answers that he believes the selling of liquor an illegitimate business, and the seller an immoral man, may not serve, though he say that he could give the defendant an impartial trial, according to law and evidence. *Swigart v. The State*, Henry C. C., Nov. term, 1879. Biddle, J. 67 Ind. 287. Reversed.

—An indictment for selling to a minor, under the law of 1875, must aver that the liquor sold was less than a quart. *Grupe v. The State*, Huntington C. C., Nov. term, 1879. Niblack, J. 67 Ind. 327. Reversed.

—An indictment for selling liquor after eleven o'clock could not be maintained under the law of 1875, after the taking effect of the law of March 5, 1877, as section 9 was repealed in all its provisions by the act of 1877. The act of 1875 is applicable only to licensed dealers. *The State v. Chrisman*, Marion C. C. C., Nov. term, 1879. Howk, J. 67 Ind. 328. Affirmed.

—Where there is no evidence as to the venue a conviction will not be upheld. *Garst v. The State*, Delaware C. C., Nov. term, 1879. Niblack, J. 68 Ind. 37. Reversed.

—An indictment for selling intoxicating liquor in a less quantity than a quart, to-wit, one pint of ale, is sufficient; but the evidence must show the venue. *Garst v. The State*, Nov. term, 1879. Howk, J. 68 Ind. 101. Reversed.

---County commissioners are not personally liable in an action to recover alleged damages resulting from their decision on an application for license. *Holloran v. McCullough*, Newton C. C., Nov. term, 1879. Scott, J. 68 Ind. 179. Affirmed.

—In a suit, by remonstrants, for costs made by appeal from the commissioners, by applicant, they are entitled only to recover for the costs made by them and for which they are liable. *Goodwin v. Smith*, Henry C. C., Nov. term, 1879. 68 Ind. 301. Reversed.

—In an indictment for selling without license, to be drank on the premises, it is sufficient to allege that the liquor was intoxicating, and it is not necessary to state the quantity; but it is not enough to show in the trial that the liquor was beer, but it must be shown that it was the kind of beer that has intoxicating qualities. If it be shown that the house was under the control of a person other than the defendant, who was only a boarder, it was not the house of the defendant within the meaning of the statute. *Plunkett v. The State*, Montgomery C. C., Nov. term, 1879. Niblack, J. 69 Ind. 68. Reversed.

—The section of the law of 1875 which declares disorderly houses a nuisance is constitutional. *O'Kane v. The State*, Daviess C. C., Nov. term, 1879. Biddle, J. 69 Ind. 183. Affirmed.

—To say that a deed is a misdemeanor in the law, is equivalent to saying that it is unlawful; therefore the section of the law of 1875, which makes selling to a minor a misdemeanor, is complete in itself. *The State v. Mulhisen*, Montgomery C. C., Nov. term, 1879. Biddle, J. 69 Ind. 145. Reversed.

—The sale of four glasses of beer at one time, to a man in the habit of getting drunk, after proper notice not to sell to him, one to be drank by him and the others by others, is selling in less quantity than a quart under the law of 1875, though the aggregate was more than a quart. *Weireter v. The State*,

Marshall C. C., Nov. term, 1879. Niblack, J. 69 Ind. 269. Affirmed.

—An indictment charging the sale of intoxicating liquor in less quantity than a quart, without license, is good without specifying the kind of liquor. *Wills v. The State*, Bartholomew C. C., Nov. term, 1879. Howk, J. 69 Ind. 286. Reversed.

—An indictment for selling on Sunday must allege that it was sold to be drank as a beverage. *Allman v. The State*, Huntington C. C., Nov. term, 1879. Worden, J. 69 Ind. 387.

—An indictment for selling two gills without license is bad, for not averring that two gills is less than a quart. *Norris v. The State*, Union C. C., Nov. term, 1879. Scott, J. 69 Ind. 415. Reversed.

—An indictment for selling "one gill" is bad for not averring that one gill is less than a quart. *Norris v. The State*, Union C. C., Nov. term, 1879. Scott, J. 69 Ind. 416. Reversed.

—Same question, same decision as 64 Ind. 447. *Kelley v. The State*, two cases, Montgomery C. C., Nov. term, 1879. Howk, J. 69 Ind. 418. Reversed.

1880. License fees, under the law of 1875, belong to the county, not to the school fund of the state. *The State v. Forkner*, Madison C. C., May term, 1880. Worden, J. 70 Ind. 241. Reversed.

—The burden of proof is upon the applicant for license to show that he is not in the habit of becoming intoxicated, and that he is a fit person to sell liquor. *Goodwin v. Smith*, Wayne C. C., Nov. term, 1880. B. K. Elliott, J. 72 Ind. 113. Affirmed.

—A sale on a prescription by a physician is not a violation of the law of 1875. *Elrod v. The State*, Orange C. C., Nov. term, 1880. Niblack, J. 72 Ind. 292. Reversed.

—Section 17 of the act of 1875, relating to nuisance, repeals section 10 of the misdemeanor act entirely, and section

8 in part, and its penalties are not limited to places kept under a license. In a trial for maintaining a nuisance, showing that crowds congregate on the sidewalk in front of the saloon, is admissible. *Douglass v. The State*, Monroe C. C., Nov. term, 1880. Woods, J. 72 Ind. 385. Affirmed.

—An employe of a firm can not sell as the employe of one of the firm who has a license. *Burke v. The State*, Monroe C. C., Nov. term, 1880. Woods, J. 72 Ind. 392. Reversed.

—In an information for selling to an intoxicated person, it is not necessary to describe the liquor, but it is necessary to prove that the quantity was less than a quart. *Buell v. The State*, Porter C. C., Nov. term, 1880. 72 Ind. 523. Reversed.

—Indictment for selling one-half pint of liquor to a minor is bad, not averring that a half pint is less than a quart. *Urbahns v. The State*, Porter C. C., Nov. term, 1880. Woods, J. 72 Ind. 602. Reversed.

—The defendant, a druggist, was fined seventy dollars for violating the law of 1875. This court will not interfere so long as the fine is within the law. A juror who, on examination, says that he is prejudiced against the traffic in liquors, believing that though legitimate it is immoral and improper, but that he can waive his prejudices and do justice to the defendant, is not disqualified for a juror. *Elliott v. The State*, Henry C. C., Nov. term, 1880. Woods, J. 73 Ind. 10. Affirmed; Worden, J., dissenting.

1881. It is not necessary that the applicant be a resident of the ward, town or county, under the law of 1875. A description of the locality so reasonably full as to point out the location, is sufficient. The board of commissioners is not the proper party to bring into court on appeal from their action, by applicant. *Murphy v. Commissioners of Monroe County*, Monroe C. C., May term, 1881. B. K. Elliott, J. 73 Ind. 483. Reversed.

—Under the law of 1875, there are two distinct offenses as to retailing without license: selling less than a quart without regard to where it is to be drank, and selling in any quantity

to be drank on the premises. In a prosecution under the first branch, it must be averred that the quantity was less than a quart, unless it be averred that it was sold to be drank on the premises; but in a prosecution under the second branch, the quantity sold is immaterial. *The State v. Zeitter*, 63 Ind. 441, is overruled. *The State v. Corll*, Wabash C. C., May term, 1881. Worden, J. 73 Ind. 535. Reversed.

—An indictment for being found drunk in a public place, which avers that the defendant was found intoxicated in a public street, highway and sidewalk, is good. A public highway is a public place. *The State v. Moriarty*, Hendricks C. C., May term, 1881. B. K. Elliott, J. 74 Ind. 103. Reversed.

—In a prosecution under the law of 1875 for selling to a minor, it is wholly immaterial whether the defendant had a license or not, and, therefore, it is not necessary to aver whether he had or had not a license. *Johnson v. The State*, Tippecanoe C. C., May term, 1881. Howk, J. 74 Ind. 197. Affirmed.

—The law of 1875 does not prohibit sales to minors for sacramental, medicinal, mechanical and business purposes. *Payne v. The State*, Monroe C. C., May term, 1881. B. K. Elliott, J. 74 Ind. 203. Affirmed.

—The averment in an indictment that the defendant did "unlawfully barter and sell" for the price of ten cents, imports a sale and not a barter. A sale implies a transfer for money, though time may be given for payment. On an indictment for selling to a minor, evidence that the minor gave two pool checks, worth five cents each, which had been sold by defendant to some one to be taken up in beer, does not show a sale. *Massey v. The State*, Benton C. C., May term, 1881. Worden, J. 74 Ind. 368. Reversed.

—An election held by a city relating to the construction of water works is a municipal election within the meaning of the act of 1877, forbidding the sale of liquors on the days of a municipal election. *The State v. Kidd*, Jackson C. C., May term, 1881. Woods, J. 74 Ind. 554. Affirmed.

—Prior to 1879 incorporated towns had no authority to regulate the sale of liquors. *Carr v. The Town of Fowler, Jasper C. C.*, May term, 1881. *Bicknell, J.* 74 Ind. 590. Reversed.

—Same question, decided same way. *Meador v. Town of Fowler, Jasper C. C.*, May term, 1881. *Bicknell, J.* 74 Ind. 601. Reversed.

—The law of 1875 forbids the selling to a minor; hence, in a prosecution for such a sale, it is immaterial whether the defendant has or has not a license to sell to a different class of persons. *The State v. Hamilton, Wabash C. C.*, May term, 1881. *Niblack, J.* 75 Ind. 238. Reversed.

—In a prosecution for selling to a minor, the averment that the defendant was or was not licensed is immaterial. *The State v. Cowgill, Wabash C. C.*, May term, 1881. *Niblack, J.* 75 Ind. 599. Reversed.

—Upon a trial for selling to a minor, the prosecuting witness swore that he never bought from the defendant, or in his presence; that he did not remember that he ever had. Such evidence is insufficient to convict. *Hogan v. The State, Wabash C. C.*, May term, 1881. *Niblack, J.* 76 Ind. 258. Reversed.

—A candidate ordered beer to be “set up” for the crowd. Fifteen or twenty drank, and he paid the bill; the beer was drank in glasses holding a pint or more. The averment was that the defendant sold “one gill, and no more; a gill being less than one quart,” the proof was that the aggregate sale was many quarts. Held, that the averment, “one gill and no more,” was an immaterial averment in the connection, and that the evidence shows a series of sales, by the glass, and, therefore, a violation of the statute. *Klein v. The State, Lake C. C.*, May term, 1881. *Niblack, J.* 76 Ind. 333. Affirmed.

—A bona fide sale for medicinal purposes is not a violation of the law of 1875. *Nixon v. The State, Henry C. C.*, Nov. term, 1881. *Howk, J.* 76 Ind. 524. Reversed.

—The majority of the court hold, that there may be other

unfitness for a license than habitual drunkenness, and so much of *Calder v. Sheppard*, 61 Ind. 219, is overruled; but the particulars of immorality must be specified in the remonstrance. *Grummon v. Holmes*, Randolph C. C., Nov. term, 1881. Worden, J. 76 Ind. 585. Reversed.

—A license to retail liquor is neither a contract nor a grant, but is at all times within the control of the legislature; hence it is no infringement on the rights of those who had obtained a county license to add a town license under the law of 1879. *McKinney v. The Town of Salem*, Washington C. C., Nov. term, 1881. B. K. Elliott, J. 77 Ind. 213. Reversed.

—A bequest, in a will, of \$1,000, the interest of which is to be used in the suppression of the manufacture, etc., of intoxicating liquors, is valid. *Haines v. Allen*, Spencer C. C., Nov. term, 1881. Bicknell, J. 78 Ind. 100. Reversed.

—So much of the law of 1875 as requires the licensee to give bond is constitutional. Where fines and costs have been paid by a replevin bail, such bail may be subrogated to the rights of the state, in the bond of the licensee, to the amount paid, with interest and costs. *Kane v. The State*, Fayette C. C., Nov. term, 1881. Howk, J. 78 Ind. 103. Affirmed.

—A license can not be issued until the bond is filed, and such bond does not cover transactions prior to its filing, and it can not be dated back to the date of the order of the commissioner, and can not legalize sales made between the order and the filing of the bond, and *Vannoy v. The State*, 64 Ind. 447, and *The State v. Wilcox*, 66 Ind. 557, are overruled. *Keiser v. The State*, Henry C. C. Nov. term, 1881. Woods, J. 78 Ind. 430. Reversed. Worden and Howk, JJ., dissent.

—An indictment charging the giving of intoxicating liquor to a minor is not sustained by proving that the liquor was sold to another, who gave it to the minor in the presence of the defendant. *Kurz v. The State*, Clark C. C., Nov. term, 1881. Howk, J. 79 Ind. 488. Reversed.

—An information alleging the giving of liquor can not be sustained by proving a sale of liquor. *Harvey v. The*

State, Henry C. C., Nov. term, 1881. Howk, J. 80 Ind. 142. Reversed.

—For the witness to swear, "I am sure it was on Sunday defendant handed us the liquor; we paid five cents a glass; the beer was intoxicating;" sustains the indictment. Pancake v. The State, Bartholomew C. C., Nov. term, 1881. Niblack, J. 81 Ind. 93. Reversed.

1882. On a trial before the court, the jury returned a general verdict for the remonstrants, and answered interrogatories. The applicant had kept a disorderly saloon, had sold without license, had sold to minors, was not of sufficiently good character to be entrusted with the business. Held, that the court did not err in not granting a license. But as the burden was on the applicant the court erred in allowing remonstrants to open and close. Hill v. Perry et al., Bartholomew C. C., May term, 1882. Best, C. 82 Ind. 23. Reversed.

—A city has no power to prohibit the sale on Sunday absolutely and at all places. Loeb v. City of Attica. Fountain C. C., May term, 1882. Best, C. 82 Ind. 175. Reversed.

—Whether the delivery, by an unlicensed saloon keeper, was intended as a sale or a gift, is a question of fact, and an instruction that if it was not then and there declared to be a gift, the transaction is a sale, is erroneous. Keiser v. The State, Henry C. C., May term, 1882. Worden, J. 82 Ind. 379. Reversed.

—A license granted Sept. 1, received and paid for on the 3d, will not protect against sales made Sept. 4 the following year. Schwarm v. The State, Tippecanoe C. C., May term, 1882. B. K. Elliott, J. 82 Ind. 470. Affirmed.

—A man may hate the liquor traffic and may yet be a competent juror to determine whether a certain applicant is entitled to a license; but if he has formed a decided opinion as to the applicant's immorality he is prejudiced on the main issue in the case and is therefore not a competent juror. Chandler v. Ruebelt, Henry C. C., May term, 1882. B. K. Elliott, J. 83 Ind. —. Reversed.

—Appellant was convicted of selling on Sunday. He testified in his own behalf that he had no knowledge of the sale, but there was evidence from which the jury inferred his knowledge or consent, and the verdict can not be disturbed. *Carey v. The State*, Hancock C. C., May term, 1882. Woods, J. 83 Ind. —. Affirmed.

—*Kiser v. The State*. Same parties and same question decided, 82 Ind. 379, and decided the same way. May term, 1882. Worden, J. 83 Ind. —. Reversed.

—There was evidence fully authorizing the inference that the quantity was less than a quart. The jury may act upon such evidence though no witness in express terms states the quantity sold. *Keiser v. The State*, Henry C. C., May term, 1882. B. K. Elliott, J. 83 Ind. —. Affirmed.

—An indictment for selling on a township election day should state the township in which the liquor is sold. *The State v. Weaver*, Allen C. C., May term, 1882. B. K. Elliott, J. 83 Ind. —. Affirmed.

—An unlicensed saloon keeper sold liquor on Sunday to a man who became too drunk to manage his team. While in this condition the saloon keeper put the drunken man in a sleigh; the horses ran off and the drunken man received injuries of which he died. Held, that the saloon keeper, under section 5323 R. S., is responsible for damages. *Dunlap v. Wagoner*, Bartholomew C. C., Nov. term, 1882. B. K. Elliott, J. 83 Ind. —. Reversed.

—An indictment which charges the defendant with selling to be drank in the house, out-house, yard and garden is good. *Stockwell v. The State*, Monroe C. C., Nov. term, 1882. Niblack, J. 83 Ind. —. Affirmed.

—To put money in a drawer, then to call for whisky, the drawer to disappear and reappear, and whisky to be returned, though no one is seen to take the money and put in the whisky, sufficiently identifies the owner of the premises, either as doing it himself or by his authority, to justify conviction. But because the state commented on the silence of

defendant in the argument, the case is reversed. Showalter v. The State, Union C. C. Nov. term, 1882. Howk, J. 83 Ind. ——. Reversed.

——The defendant was indicted for selling one dram of whisky. He asked the court to instruct the jury that they must find, before conviction, that one dram is less than a quart, and if there is no evidence that it is, the defendant can not be convicted. The court did not err in refusing to so instruct, but to instruct that they must find only beyond reasonable doubt that it is less than a quart. Feigle v. The State, Allen C C., Nov. term, 1882. Howk, J. 83 Ind. ——. Affirmed.

NOTE.—A few of the later decisions are taken from the newspaper reports, the official report not being yet published. They may not be as reliable as the others.



